THE FINANCIAL SERVICES COMMISSION OF ONTARIO

PENSION BULLETIN

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Ontario

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GENERAL ANNOUNCEMENTS

Important Notice to Administrators

Please note the following information concerning the filing requirements of your Annual Information Return (AIR) and your Pension Fund Financial Statement. Both of these documents are required to be filed under the *Pension Benefits Act*, R.S.O. 1990.

Annual Information Return

The AIR form is mailed out by the Financial Services Commission of Ontario (FSCO) 3 months after the fiscal year end of your pension plan. The AIR must be completed and returned with the required annual filing fee prior to the due date specified on page 5 of the AIR form.

Please submit your completed AIR for processing to:

Ministry of Finance
Revenue Operations and Client Services Branch
P.O. Box 620
33 King Street West
Oshawa ON L1H 8E9

Pension Fund Financial Statements

Section 76 of Regulation 909, R.R.O. 1990, as amended, contains the requirements for filing the annual Financial Statements for the pension fund or plan in detail. In addition to filing the Financial Statements, if at the end of the fiscal year end of a pension plan, the plan has $3,000,000 or more in assets calculated at market value, the administrator must ALSO file an auditor's report in respect of the financial statement.

Please submit your completed Financial Statements directly to the Financial Services Commission of Ontario at:

Financial Services Commission of Ontario
Pension Plans Branch
5160 Yonge Street, 4th Floor
P.O. Box 85
North York ON M2N 6L9

To avoid delays in processing, please send your Financial Statements and the AIR to the correct address.

Introduction of Bill 198

On December 4, 2002, the Minister announced that the government received unanimous consent to withdraw the amendments to the PBA from Bill 198. The Minister said in a media release:

"This government has made a clear commitment to further consultations. We are committed to ongoing efforts with our stakeholders and determining the best steps to address the pension issues." The Minister also stated that the government is committed to working with stakeholders to create an expert committee to examine how Ontario should address these issues.

On October 30, 2002, the Hon. Janet Ecker, Minister of Finance, introduced Bill 198, "Keeping the Promise for a Strong Economy Act (Budget Measurers), 2002". Part XXV contained amendments to the Pension Benefits Act (PBA) that would, if enacted, have amended the rules regarding the payment of surplus from pension plans, partial wind ups, contribution holidays, and refunds to employers from defined contribution plans in certain situations. In addition, the Bill provided for the payment of pension benefits of members who could not be found when a plan fully wound up in a trust unit administered by the Financial Services Commission of Ontario.

Pension Division Staff Changes

Roger Smithies has been seconded to act as Manager of the Pension and Income Security Policy Branch of the Ministry of Finance. **Jerry Williams** has assumed the position of Acting Manager of the Pension Policy Unit. **Fatima Vieira** joined the Pension Policy Unit as a Policy Analyst.

Contacts for Plan Specific Enquiries

Contact Name	Title	Phone Number	Allocation Alpha Range
Jaan Pringi	Sr. Pension Officer	(416) 226-7826	
Gulnar Chandani	Pension Officer	(416) 226-7770	#'s–Associated
Penny McIlraith	Pension Officer	(416) 226-7822	Associates–Bulk
Irene Mook-Sang	Pension Officer	(416) 226-7824	Bull–Cem
Stanley Chan	Pension Officer	(416) 226-7829	Cen–Cz
Kathy Carmosino	Pension Officer	(416) 226-7823	I–King
Preethi Anthonypillai	Pension Officer	(416) 226-7812	Kinh–Mark
Gino Marandola	Sr. Pension Officer	(416) 226-7820	
Calvin Andrews	Pension Officer	(416) 226-7768	Gko–H
Anna Vani	Pension Officer	(416) 226-7833	D–Em
John Graham	Pension Officer	(416) 226-7774	Marl–Nes
Julina Lam	Pension Officer	(416) 226-7815	Net–Pep
Anna Vani	Pension Officer	(416) 226-7833	Peq–Rob
Rosemin Jiwa Jutha	Sr. Pension Officer	(416) 226-7816	
John Khing Shan	Pension Officer	(416) 590-7237	En–Gkn
Peter Dunlop	Pension Officer	(416) 226-7860	Roc–Sons
Hae-Jin Kim	Pension Officer	(416) 226-7876	Sont–The Drop
David Allan	Pension Officer	(416) 226-7803	The Droq–Unicorp
Mark Lucyk	Pension Officer	(416) 226-7781	Unicorp–Z
Robin Gray	Pension Officer	(416) 226-7855	

FSCO Pension Advisory Committees — Membership as at November 2002

Accounting and Assurance Advisory Committee

Besler, Jason
Eigl, Charlie **(Chair)**
French, Mike
Racanelli, Nick
Wade, Jack
Cassidy, Jim
Finn, Mary Ann
Koehli, Ron
Turner, Eric
Walker, Albert

Actuarial Advisory Committee

Cohen, Lorne **(Vice-Chair)**
Figueiredo, Karen **(Chair)**
Hutchinson, Laurie
Morrison, Dan
Pitcher, Clare
Rosenblat, Rob
DiRisio, Wendy
Hart, David
Levy, Thomas
Peng, Peter
Robertson, Marcus

Investment Advisory Committee

Bertram, Bob
Grantier, Bruce
Mercier, Eileen
Pennal, Peter
Pond, Robin
With, Alf **(Chair)**
Franks, Jim
Kyle, Claire
Mills, Daniel
Phelps, Tom **(Vice-Chair)**
Schaefer, Klaus

Legal Advisory Committee

Forgie, Jeremy
Healy, Priscilla
Nachshen, Gary **(Chair)**
Picard, Mary
Whiston, Bethune
Gold, Murray **(Vice-Chair)**
Lokan, Andrew
O'Reilly, Hugh
Rienzo, Doug

HEARINGS/COURT MATTERS

The information set out below is current to November 26, 2002.

Enforcement Matters

i. Canadian Corporation Creation Center (CCCC)

Charges under the *Pension Benefits Act* (the "Act") were laid against the CCCC Pension Plan administrator, the individual trustees, CCCC and related companies on September 12, 2001. The charges relate to a scheme whereby locked in accounts were assigned to the defendant companies in return for the promise to extend a loan to the locked in account holder. A first appearance occurred on October 9, 2001. A second appearance occurred on December 6, 2001, at which time one of the individual trustees pleaded guilty to a charge of failing to administer the CCCC Pension Plan in accordance with the Act. A fine of $5000 inclusive of victim surcharge was levied. The charges against some of the defendants were withdrawn on June 17, 2002. The final set of related charges against Sandra Weinstein was withdrawn on August 23, 2002.

ii. Club 300 Bowl (BC)

Charges were laid against the corporation and both directors and officers for failing to pay funds deducted from employees' pay into the pension plan, failing to pay the required employer's contributions into the pension plan, failing to file Annual Information Returns and Financial Statements for fiscal years 1995 to 1998 and failing to file a wind-up report. The first appearance for the charges occurred on July 24, 2002. The fourth court appearance is December 4, 2002.

iii. Dubreuil Forest Products Limited

Charges were laid for failing to file a financial statement. The first appearance for the charges occurred on March 5, 2002. The matter was subsequently adjourned to August 27, 2002. On August 27, 2002, Dubreuil Forest Products pleaded guilty to both counts on the information, convictions were entered and a fine of $10,000.00 was imposed.

iv. Chris Bain

Microcolor Dispersions Inc. ("Microcolor") failed to remit both employer and employee contributions to its pension plan in breach of the Act. Both the Company and its then part owner/director Chris Bain, were charged under the Act. Bain was charged in his personal capacity with being a director who had acquiesced or permitted Microcolor to breach the Act. Both Bain and the company were convicted. A probation order was made against Bain requiring him to make additional payments to the pension fund. He failed to comply with the order and was charged with breach of the probation order. The trial is scheduled for January 27, 2003.

v. Microcolor Dispersion Inc.

Microcolor was charged and convicted of failing to remit both employer and employee contributions into its pension plan, in respect of a certain period, in breach of the Act. The required contributions were not made and the company has been charged again in respect of a later period. A judicial pre-trial is scheduled for January 13, 2003.

vi. John Parker

John Parker is a director of Microcolor. He has been charged in his personal capacity with permitting or acquiescing in Microcolor's failure to remit the employer and employees' contributions into the pension plan. The next appearance will take place on November 8, 2002.

vii. Mimik Industries Inc.

Charges were laid against the employer, Mimik Industries Inc., and against an officer of the employer for failing to remit the required contributions to the pension plan. The charges are based on the employer's failure to pay the entire amount of arrears due under a probation order dated October 9, 1997 — approximately $31,500 is outstanding. A judicial pre-trial is scheduled for February 5, 2003.

viii. Rellok Ltd.

Charges were laid for failing to pay the filing fees for annual information return for two consecutive years. The first appearance was on June 28, 2002, when the matter was adjourned to July 30, 2002. On July 30, 2002, the matter was adjourned to September 27, 2002. On September 27, 2002, Rellok Ltd. pleaded guilty to both counts on the information, convictions were entered on both counts and Rellok was fined $2,000.00.

Court Matters

i. Monsanto Canada Inc.

On April 29 and 30, 2002, the Court of Appeal heard the appeal of the Divisional Court's decision brought by Monsanto Canada Inc., the Association of Canadian Pension Management, and the National Trust Company. The issues are whether the Act compels a distribution of surplus on partial wind up and whether the doctrine of legitimate expectation applies. The Divisional Court had unanimously allowed the Superintendent's appeal of the Financial Services Tribunal's majority decision, which held that the Act does not compel a distribution of surplus on partial wind up and that the doctrine of legitimate expectation applied.

On November 22, 2002, the Court of Appeal unanimously dismissed the appeal, holding that subsection 70(6) of the PBA requires a distribution of surplus on partial wind up and that the doctrine of legitimate expectation does not apply.

ii. Ontario Teachers' Pension Plan (Anne Stairs)

On May 24, 2002, the Divisional Court heard an appeal by Anne Stairs against the Financial Services Tribunal's decision that directed the Superintendent to refuse to carry out a proposal to order the Teachers' Pension Plan Board to pay certain survivor benefits to Ms. Stairs, a former spouse of the plan member who died before reaching retirement age. The Tribunal held that a separation agreement awarding Ms. Stairs an interest in the plan member's pension benefits (including death benefits) could not be enforced under the Act, as death benefits were not property and the plan member's spouse at the time of his death was not a party to the separation agreement.

The Divisional Court released its decision on June 18, 2002. The appeal was allowed. The Court found that death benefits were property that could be assigned and that subsection 48(13) of the Act clearly gave Ms. Stairs an interest in the death benefits. The Divisional Court held that the standard of review is reasonableness, but the standard is correctness when the Tribunal interprets family law or the common law.

The parties returned to argue the amount of Ms. Stairs entitlement before the Divisional Court on September 3, 2002. The court reserved its decision.

SUPERINTENDENT OF FINANCIAL SERVICES

Appointment of Administrators — Section 71 of the PBA

1. Thompson Actuarial as the Administrator of the Commercial Aluminum (1993) Limited Hourly Employees Pension Plan (Registration No. 1010289), effective immediately.

   DATED at Toronto, Ontario, this 4th day of October, 2002.

2. PricewaterhouseCoopers as the Administrator of the Pension Plan for Non-Bargaining Salaried Employees of Trailmobile Trailer Canada Ltd. (Registration No. 337006), effective immediately.

   DATED at Toronto, Ontario, this 1st day of October, 2002.

3. Maritime Life Assurance Company as the Administrator of the Registered Pension Plan for Cunningham Foundry, a Division Of Quint Industries Inc. (Registration No. 0432450), effective immediately.

   DATED at Toronto, Ontario, this 11th day of September, 2002.

4. London Life Insurance Company as the Administrator of the Employee Retirement Plan for the Employees of Piccione Machine Tool & Gear Mfg. Ltd. (Registration No. 582080), effective immediately.

   DATED at Toronto, Ontario, this 10th day of September, 2002.

5. Morneau Sobeco as the Administrator of the Algoma Steel Inc. Salaried Pension Plan for Employees in Canada (Registration No. 335810), effective immediately.

   DATED at Toronto, Ontario, this 6th day of September, 2002.

6. Morneau Sobeco as the Administrator of the Non-Contributory Pension Plan Covering Hourly Paid Bargaining Unit Employees of Algoma Steel Inc. (Registration No. 335802), effective immediately.

   DATED at Toronto, Ontario, this 6th day of September, 2002.

7. Morneau Sobeco as the Administrator of the Pension Plan for Employees of General Publishing Co. Limited (Registration No. 0563148), effective immediately.

   DATED at Toronto, Ontario, this 5th day of September, 2002.

8. Morneau Sobeco as the Administrator of the Pension Plan For Salaried Employees of the Real Estate Division of Olympia & York Developments (Registration No. 570754), effective immediately.

   DATED at Toronto, Ontario, this 13th day of August, 2002.

9. Mackenzie Financial as the Administrator of the Registered Pension Plan for the Employees of P.R. Manufacturing Incorporated (Registration No. 1055029), effective immediately.

   DATED at Toronto, Ontario, this 17th day of July, 2002.

10. Clarica Financial as the Administrator of the Registered Pension Plan for Employees of Superpac Acquisitions Inc. (Registration No. 1054071), effective immediately.

    DATED at Toronto, Ontario, this 17th day of July, 2002.

11. Manulife Financial as the Administrator of the Pension Plan for OSF Inc. (Registration No. 594366), effective immediately.

    DATED at Toronto, Ontario, this 16th day of July, 2002.

12. Morneau Sobeco as the Administrator of the Peterborough Paper Converters Pension Plan (Registration No. 283358), effective immediately.

    DATED at Toronto, Ontario, this 16th day of July, 2002.

13. Standard Life Assurance Company as the Administrator of the Pension Plan for the Employees of Danbel Inc. (Registration No. 1047687), effective immediately.

    DATED at Toronto, Ontario, this 3rd day of July, 2002.

14. Canada Life Assurance Company as the Administrator of the Pension Plan for Salaried Employees of Mosler Canada Inc. (Registration No. 941732), effective immediately.

    DATED at Toronto, Ontario, this 23rd day of May, 2002.

Notices of Proposal to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration No. 1050210;**

TO: **Beta Brands Limited**

Attention: Mr. George Harrison
CFO & Secretary
1156 Dundas Street East
London ON N5W 5Y4

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(4) of the Act, consenting to the payment out of the Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration No. 1050210 (the "Plan"), to Beta Brands Limited in the amount of $17,376.10 as at June 30, 2001, plus interest at the fund rate of return thereon to the date of payment.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Beta Brands Limited is the employer as defined in the Plan (the "Employer").
2. As a result of an advance contribution of $50,000 to the Plan while an actuarial valuation was prepared, the 1998 employer current service cost and special payments made in December 1999 did not take into account the advance contribution and an overpayment resulted. The advance contributions, after taking into account interest owed to the fund in respect of late contribution payments, resulted in an overpayment of $17,376.10 as at June 30, 2001.
3. Evidence of the overpayments to the fund has been submitted to the Financial Services Commission of Ontario.
4. There were no member submissions made about the repayment.
5. The application appears to comply with section 78(4) of the Act.
6. Such further and other reasons as come to my attention.

In accordance with subsection 105.(1) of the Act, an extension of the time limit under subsection 78(4) has been given.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

[1]NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 19th day of June, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

cc: Mr. Eric Poirier,
Mercer Human Resource Consulting
Mr. Michael E. Labute,
Mercer Human Resource Consulting

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Pension Plan for Salaried Union Employees of BICC Phillips Inc. (Located at Brockville, Ontario), Registration No. 370205;**

TO: **BICC Canada Inc.**
c/o Balfour Beatty Construction, Inc.

Attention: Ms. Joanne Bonfiglio
254 South Main Street
New City NY 10956 USA

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(4) of the Act, consenting to the payment out of the Pension Plan for Salaried Union Employees of BICC Phillips Inc. (Located at Brockville, Ontario), Registration No. 370205 (the "Plan"), to BICC Cables Canada Inc. in the amount of $23,735 as at August 22, 2000, adjusted for expenses, plus investment earnings thereon to the date of payment.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. BICC Canada Inc. is the employer as defined in the Plan (the "Employer"), as amended by the Articles of Amalgamation at January 1, 2001.
2. As a result of the purchase of annuities in 1999 for the remaining members of the Plan, the company was required to make an additional contribution to the Plan to fund the cost of the annuity purchase. After the insurer had collected all the required documentation and completed its administrative work, it was ascertained that the amount the company paid the insurer exceeded the final cost of the annuities. The insurance company refunded the excess amount plus accumulated interest to the trust fund of the Plan in 2000. The company is making an application for a refund from the trust fund of the excess amount.
3. Evidence of the overpayment to the fund in the form of a copy of the initial annuity quote summary from Industrial Alliance Life Insurance Company and the final reconciliation from Industrial Alliance, indicating the refund amount plus interest as at August 22, 2000, has been submitted to the Financial Services Commission of Ontario.
5. There were three member submissions made about the repayment in response to the notice of the application provided to them by the company, none of which contained substantive submissions regarding the application or Act or the Plan documents.
6. The application appears to comply with section 78(4) of the Act.
7. Such further and other reasons as come to my attention.

In accordance with subsection 105.(1) of the Act, an extension of the time limit under subsection 78(4) has been given.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 24th day of June, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

cc: Mr. Duncan Richardson, Mercer Human Resource Consulting
Mr. Willard M. Burke
Mr. Donald W. Conlin
Mr. Arthur W. Lane

[1]NOTE – PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c.28, respecting the **Pension Plan for the Employees of Kaufman of Collingwood, The Furniture Division of William H. Kaufman Inc., Registration Number 0340091 (the "Pension Plan");**

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal PQ H3G 1G3

Attention: Jean-Claude Lebel
Pension Actuary

Administrator of the Pension Plan for the Employees of Kaufman of Collingwood, The Furniture Division of William H. Kaufman Inc.

AND TO: **Kaufman of Collingwood, The Furniture Division of William H. Kaufman Inc.**
201 Balsalm Street
Collingwood ON L9Y 3Y7

Attention: Barry Knox
Controller

Employer

AND TO: **Ernst & Young Inc.**
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Jorden Sleeth

Receiver and Trustee in Bankruptcy for William H. Kaufman Inc.

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for the Employees of Kaufman of Collingwood, The Furniture Division of William H. Kaufman Inc., No. 0340349, be wound up in full, effective July 14, 2000.
I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension or employer contributions to the pension fund.
2. A significant number of the members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result the reorganization of the business of the employer.
3. The employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada).
4. A significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
5. All or a significant portion of the business carried on by the employer at a specific location is discontinued.

6. All or part of the employer's business or all or part of the assets of the employer's business are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for the members of the employer's pension plan who become employees of the person.
7. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 25th day of June, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

[1]NOTE – PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c.28, respecting the **Pension Plan for the Employees of Kaufman Footwear, Division of William H. Kaufman Inc., Registration Number 0340349 (the "Pension Plan")**

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal PQ H3G 1G3

Attention: Jean-Claude Lebel
Pension Actuary

Administrator of the Pension Plan for the Employees of Kaufman Footwear, Division of William H. Kaufman Inc.

AND TO: **Kaufman Footwear, Division of William H. Kaufman Inc.**
P.O. Box 9005
410 King Street West
Kitchener ON N2G 4J8

Attention: S.I. Snyder
Vice President, Finance

Employer

AND TO: **Ernst & Young Inc.**
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Jorden Sleeth

Receiver and Trustee in Bankruptcy for William H. Kaufman Inc.

AND TO: **United Steelworkers of America**
89 Dawson Road
Guelph ON N1H 1B1

Attention: Ken Dawson

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for the Employees of Kaufman Footwear, Division of William H. Kaufman Inc., No. 0340349, be wound up in full effective July 21, 2000.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension or employer contributions to the pension fund.
2. A significant number of the members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result the reorganization of the business of the employer.
3. The employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada).
4. A significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

5. All or a significant portion of the business carried on by the employer at a specific location is discontinued.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL, IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 25th day of June, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Pension Plan for Hourly Employees of BICC Phillips Inc. (Located at its Brockville Factory), Registration No. 293753;**

TO: **BICC Canada Inc.**
c/o Balfour Beatty Construction, Inc.

Attention: Ms. Joanne Bonfiglio
254 South Main Street
New City NY 10956 USA

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(4) of the Act, consenting to the payment out of the Pension Plan for Hourly Employees of BICC Phillips Inc. (Located at its Brockville Factory), Registration No. 293753 (the "Plan"), to BICC Canada Inc. in the amount of $782,818 as at August 22, 2000, adjusted for expenses, plus investment earnings thereon to the date of payment.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. BICC Canada Inc. is the employer as defined in the Plan (the "Employer"), as amended by the Articles of Amalgamation at January 1, 2001.
2. As a result of the purchase of annuities in 1999 for the remaining members of the Plan, the company was required to make an additional contribution to the Plan to fund the cost of the annuity purchase. After the insurer had collected all the required documentation and completed its administrative work, it was ascertained that the amount the company paid the insurer exceeded the final cost of the annuities. The insurance company refunded the excess amount plus accumulated interest to the trust fund of the Plan in 2000. The company is making an application for a refund from the trust fund of the excess amount.
3. Evidence of the overpayment to the fund in the form of a copy of the initial annuity quote summary from Industrial Alliance Life Insurance Company and the final reconciliation from Industrial Alliance, indicating the refund amount plus interest as at August 22, 2000, has been submitted to the Financial Services Commission of Ontario.
4. There were ten member submissions made about the repayment in response to the notice of the application provided to them by the company, none of which contained substantive submissions regarding the application or Act or the Plan documents.
5. The application appears to comply with section 78(4) of the Act.
6. Such further and other reasons as come to my attention.

In accordance with subsection 105.(1) of the Act, an extension of the time limit under subsection 78(4) has been given.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 26th day of June, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

cc: Mr. Duncan Richardson, Mercer Human Resource Consulting
Mr. William Greenham
Mr. Roger Eyre
Mr. Malcolm Blair
Mr. Giovanni Hrelia
Mr. Robert C. Andress
Mr. W.G. Haggart
Mr. Earl G. Mott
Mr. J. Richard Gill
Mr. Arthur W. Lane
Mr. Donald W. Conlin

[1]NOTE – PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Boehringer Ingelheim (Canada) Ltd./Ltée Employees' Pension Plan, Registration No. 356162;**

TO: **Boehringer Ingelheim (Canada) Ltd./Ltée**

Attention: Louise Muller
Manager, Human Resources
5180 South Service Road
Burlington ON L7L 5H4

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(4) of the Act, consenting to the payment out of the Boehringer Ingelheim (Canada) Ltd./Ltée Employees' Pension Plan, Registration No. 356162 (the "Plan"), to a refund of employer contributions in the amount of $1,351,669.22 as at January 16, 2002.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Boehringer Ingelheim (Canada) Ltd./Ltée is the employer as defined in the Plan (the "Employer").
2. As a result of the delay caused by Royal Trust to effect the payments from the fund in a timely manner, employer contributions for 2000, 2001 and January 2002 were made to the fund by the employer rather than from the fund as a contribution holiday out of surplus.
3. Evidence of the overpayment to the fund for 2000, 2001 and January 2002 has been submitted to the Financial Services Commission of Ontario.
4. There were no member submissions made about the repayment.
5. The application appears to comply with section 78(4) of the Act.
6. Such further and other reasons as come to my attention.

In accordance with subsection 105.(1) of the Act, an extension of the time limit under subsection 78(4) has been given.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

[1]NOTE – PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 2nd day of July, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

cc: Ms. Renate Leis, Buck Consultants Limited

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **AFG Industries Ltd. Salaried Pension Plan, Registration No. 1070853;**

TO: **AFG Industries Ltd.**
1400 Lincoln Street
Kingsport TN 37660 U.S.A.

Attention: Steven E. Kramer
Vice President, Human Resources and General Counsel

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the AFG Industries Ltd. Salaried Pension Plan, Registration No. 1070853 (the "Plan"), to AFG Industries Ltd. in the amount of $14,303,441 as at January 10, 2001, plus earnings thereon to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all the consenting members' and former members' entitlements from the Plan, have been first transferred out and paid to the members or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. AFG Industries Ltd. is the employer as defined in the Plan (the "Employer").
2. The Plan was partially wound up, effective January 10, 2001.
3. As at January 10, 2001, the surplus in the Plan was estimated at $33,718,817.
4. The Plan provides for payment of surplus to the Employer on the partial wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and on behalf of the 100% of the consenters, the surplus in the Plan at the date of payment, after deduction of wind up expenses, is to be distributed:
   a) approximately 42.42% to the Employer; and
   b) approximately 42.43% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of approximately 42.42% of the surplus in the Plan.
7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

[1]NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 2nd day of August, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

cc: Geoffrey Gibson, Towers Perrin Inc.
Audrey Mak, Fraser Milner Casgrain
Mark Zigler, Koskie Minsky

Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to the payment out of the **Dry-Ac Ltd. Executive Pension Plan, Registration No. 987057;**

TO: **Dry-Ac Ltd.**
98 Daffodil Crescent
Ancaster ON L9K 1E2

Attention: Eugene Campbell
President & Secretary

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Dry-Ac Ltd. Executive Pension Plan, Registration No. 987057 (the "Plan"), to Dry-Ac Ltd. in the amount of $92,800 as at February 1, 2001, plus earnings there onto the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that a provision has been made for the payment of liabilities of the pension plan as calculated for purposes of termination of the pension plan.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Dry-Ac Ltd. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective February 1, 2001.
3. As at February 1, 2001, the surplus in the Plan was estimated at $92,800.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and the sole member (as defined in the application) entitled to payments, the surplus in the Plan at the date of payment, is to be distributed 100% to the Employer.
6. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan.
7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) of the Regulation.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

[1]NOTE – PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 14th day of August, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

cc: Jean Robichaud, The Standard Life Assurance Company

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Staff Pension Plan for Employees of Furmanite Canada Ltd., Registration No. 428557;**

TO: **Furmanite Canada Ltd.**
862 Upper Canada Drive, Unit 9
Sarnia ON N7T 7H3

Attention: Mr. Dan Stitt
President

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Staff Pension Plan for Employees of Furmanite Canada Ltd., Registration No. 428557 (the "Plan"), to Furmanite Canada Ltd. in the amount of $88,330 as at September 30, 1997, plus investment earnings and other adjustments thereto, to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Furmanite Canada Ltd. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective September 30, 1997.
3. As at September 30, 1997, the surplus in the Plan was estimated at $159,340.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
   a) a minimum of 45% of surplus without interest as at September 30, 1997, equalling $71,010, to a maximum of 40% of the final valuation of the surplus prior to distribution will be distributed to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement; and
   b) the balance of the surplus refunded to the Employer after the members and former members received their share.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 55% of the surplus in the Plan (after adding investment earnings and deducting the expenses related to the wind up of the Plan and adjustments for Surplus agreement).

7. The application appears to comply with section 78 and subsection 79(3)(a)&(b) of the Act and with clause 8(1)(b) and subsection 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 11th day of September, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

cc: Marian McKillop, Corporate Benefit Analysts, Inc.

[1]NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration No. 1079920;**

TO: **McMaster University**
1280 Main Street West
Gilmour Hall — 202
Hamilton ON L8S 4K1

Attention: Karen Belaire
Vice-President Administration

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration No. 1079920 (the "Plan"), to McMaster University in the amount of 50 percent of the Distributable Surplus as at July 1, 2000, as defined in the Surplus Sharing Agreement plus investment earnings thereon to the date of payment. The Distributable Surplus is estimated to be $152,842,041.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. McMaster University is the employer as defined in the Plan (the "Employer").
2. As at July 1, 2000, the surplus in the Plan was estimated at $152,842,041.
3. The Plan provides for payment of surplus to the Employer while the Plan continues.
4. The application discloses that by written agreement made by the Employer and all of the active members and other members (as defined in the application), all of the former members and other persons entitled to payments from the fund and all persons in respect of whom the administrator has purchased an annuity or ancillary benefit — other than those persons who requested the administrator to do so, the distributable surplus in the Plan at the date of payment, after deduction of expenses is to be distributed:
   a) 50% to the Employer; and
   b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
5. The Employer has applied, pursuant to section 78 of the Act, and section 10 of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus to be distributed from the Plan (after adding 50% of investment earnings and deducting 50% of the expenses thereto).
6. The application appears to comply with section 78 and subsection 79(1) of the Act and with section 10 and subsections 25(1), 25(2) and 25(4) of the Regulation.
7. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9
Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 13th day of September, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

cc: Randy V. Bauslaugh, Blake Cassels & Graydon LLP
Michael Mazzuca, Koskie Minsky

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Eaton Superannuation Plan for Designated Employees, Registration No. 0593673;**

TO: **Richter and Partners Inc.**
c/o Fasken Martineau DuMoulin LLP
66 Wellington Street West
Suite 4200, Toronto Dominion Bank Tower
Box 20, Toronto-Dominion Centre
Toronto ON M5K 1N6

Attention: Brent K. Duguid

Applicant

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Eaton Superannuation Plan for Designated Employees, Registration No. 0593673 (the "Plan"), to Richter and Partners Inc., Liquidator of Distributionco Inc. in the amount of $354,700 as at December 31, 2001, plus investment earnings thereon to the date of payment, and adjusted for actual expenses incurred in connection with this Application.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that the payment of the members' negotiated share of the surplus has been made.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. The Applicant is the Liquidator of Distributionco Inc., who is duly authorized by The T. Eaton Company Limited (the employer as defined in the Plan), to receive the surplus assets.
2. The Plan was wound up, effective September 11, 1999.
3. As at December 31, 2002, the surplus in the Plan was estimated at $1,773,700.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Applicant, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
   a) 20% to the Employer; and
   b) 80% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Applicant has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 20% of the surplus in the Plan as at December 31, 2001, plus investment earnings and deducting the expenses related to this application.
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 20th day of September, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

cc: Paul Macphail, PricewaterhouseCoopers Inc.

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to the payment out of the

Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration No. 1079920;

TO: **McMaster University**
1280 Main Street West
Gilmour Hall — 202
Hamilton ON L8S 4K1

Attention: Karen Belaire
Vice-President Administration

Applicant and Employer

AMENDED NOTICE OF PROPOSAL
(Amended September 27, 2002)

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration No. 1079920 (the "Plan"), to McMaster University in the amount of 50 percent of the Distributable Surplus as at July 1, 2000, as defined in the Surplus Sharing Agreement plus investment earnings thereon to the date of payment. The Distributable Surplus is estimated to be $152,842,041.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. McMaster University is the employer as defined in the Plan (the "Employer").
2. As at July 1, 2000, the surplus in the Plan was estimated at $318,213,000.
3. The Plan provides for payment of surplus to the Employer while the Plan continues.
4. The application discloses that by written agreement made by the Employer, and all of the active members and other members (as defined in the application), all of the former members and other persons entitled to payments from the fund, and all persons in respect of whom the administrator has purchased an annuity or ancillary benefit — other than those persons who requested the administrator to do so, the distributable surplus in the Plan at the date of payment, after deduction of expenses is to be distributed:
   a) 50% to the Employer; and
   b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
5. The Employer has applied, pursuant to section 78 of the Act, and section 10 of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the excess of the Distributable Surplus over the expenses in respect of the surplus distribution (as described in the Surplus Sharing Agreement) plus 50% of the net investment earnings on such excess (as described in the Surplus Sharing Agreement).
6. The application appears to comply with section 78 and subsection 79(1) of the Act and with section 10 and subsections 25(1), 25(2) and 25(4) of the Regulation.
7. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 27th day of September, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
By Delegated Authority

cc: Randy V. Bauslaugh, Blake Cassels & Graydon LLP
Michael Mazzuca, Koskie Minsky

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, S.O. 1997, c.28 (the "PBA");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69(1) (d) of the PBA relating to the **Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338**;

TO: **Slater Steel Inc.**
Hamilton Specialty Bar Division
P.O. Box 2943, Hamilton
Stn LCD 1
Hamilton ON L8N 3P9

Employer and Administrator

AND TO: **Osler Hoskin & Harcourt**
Barristers and Solicitors
Box 50, 1 Canadian Place
Toronto ON M5X 1B8

Counsel to the Employer and Administrator

AND TO: **Murray Gold**
Koskie Minsky
Barristers and Solicitors
20 Queen Street West
Suite 900, Box 52
Toronto ON M5H 3R3

Counsel to former employees

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under section 69 (1) (d) of the PBA that the Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338 (the "Plan"), be wound up, in part in relation to those members and former members of the Plan who ceased to be employed by Slater Steel Inc. ("Slater Steel") effective from March 13,1998 to January 26, 2000, as a result of the reorganization of the business of Slater Steel.

REASONS FOR THE ORDER:

1. Slater Steel is the employer and administrator of the Plan.
2. There was a reorganization of senior management of Slater Steel in 1998 resulting in the termination of a number of senior managers and the elimination of positions formerly held by the terminated managers.
3. In 1998, there was a significant change relating to the restructuring of the senior management of Slater Steel, a centralized approach to management and a capitalization of synergies that exist among core businesses. Specifically, these changes related to the combining of purchasing functions, sales and marketing activities from Hamilton Speciality Bar Division (HSB), Fort Wayne and Sorel Operations.
4. There was a general cost cutting initiative undertaken which culminated in multiple terminations in October 1998. Slater Steel voluntarily declared a partial wind up effective October 31, 2001, in respect of all active members of the Plan whose employment was involuntarily terminated, who were offered early retirement with non-pension enhancements or who resigned during October 1998.
5. In 1998, there were capital expenditures to replace aging equipment to improve productivity. There was the completion of a new arc furnace at HSB facility. The furnace was commissioned on a full time basis in November 1997 and was designed to reduce costs, increase production and lower environmental impacts.

6. Slater divested itself of the Melburn Truck Lines subsidiary in February 1999.
7. Between March 13, 1998 and January 26, 2000, a significant number of members of the Plan ceased to be employed by Slater Steel, as a result of the reorganization of the business of Slater Steel within the meaning of clause 69(1)(d) of the PBA.
8. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the PBA to request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

Your written notice must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

For further information, contact the registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the Act to transmit a copy of this Notice of Proposal to the following persons: all members and former members of the Plan who were employed by Slater Steel and who ceased to be employed by Slater Steel effective between March 13, 1998 and January 26, 2000.

DATED at Toronto, Ontario, this 27th day of September, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
By Delegated Authority

[1]NOTE — PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Pension Plan for Employees of The Wool Bureau of Canada Limited, Registration No. 0314187;**

TO: **Woolmark Americas, Ltd.**
7 Purdue Road
Edison, New Jersey
USA 08820

Attention: John McGowan
President

Applicant, Employer and Administrator of the Plan

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under subsection 78(1) of the Act, consenting to payment out of the Pension Plan for Employees of The Wool Bureau of Canada Limited, Registration No. 0314187 (the "Plan"), to Woolmark Americas, Ltd., of the Net Company Surplus. Net Company Surplus means 50% of the Surplus less the reasonable legal fees, disbursements and taxes charged to the Applicant after January 1, 1999, in respect of the wind up of the Plan and the distribution of Surplus. Surplus means the surplus in the Plan, plus investment earnings thereon, after deducting actuarial expenses in connection with the wind up of the Plan including the distribution of surplus, but prior to deducting the reasonable legal fees, disbursements and taxes charged to the Applicant after January 1, 1999, in respect of the wind up of the Plan and the distribution of Surplus and the reasonable legal fees, disbursements and taxes charged for services to the members after January 1, 2000, in respect of the distribution of Surplus.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that the payment of the members' share of the negotiated surplus has been made.

REASONS FOR THE ORDER:

1. The Applicant is the employer named in the Plan.
2. The Plan was wound up, effective December 31, 1998.
3. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of Regulation 909 made under the Act, for consent of the Superintendent of Financial Services to the payment of part of the surplus in the Plan on wind up.
4. As of December 31, 1998, the surplus in the Plan was estimated at approximately $2,157,892.
5. The Applicant and the members and former members of the Plan entered into a Surplus Distribution Agreement and Release dated as of March 28, 2001, wherein it was agreed that the Applicant would receive the Net Company Surplus as defined therein. Net Company Surplus is defined as 50% of the Surplus less the reasonable legal fees, disbursements and taxes charged to the Applicant after January 1, 1999, in respect of the wind up of the Plan and the distribution of Surplus. Surplus was defined in that agreement as the sum of the amount remaining in the Plan, plus investment earnings thereon, after deducting actuarial expenses in connection with the wind up of the Plan including the distribution of surplus, but prior to deducting the reasonable legal fees, disbursements and taxes charged

to the Applicant after January 1, 1999, in respect of the wind up of the Plan and the distribution of Surplus and the reasonable legal fees, disbursements and taxes charged for services to the Members after January 1, 2000, in respect of the distribution of Surplus. The Applicant has estimated that the amount to be refunded to the Applicant, as at December 31, 2000, and before the deduction of the Applicant's legal fees and disbursements and taxes is $1,138,320.54.

6. The Plan, which was established as of July 1, 1975, as the Pension Plan for the Employees of the Wool Bureau of Canada Limited (1975), provides for the payment of surplus to the Employer on the wind up of the Plan.
7. The application discloses that the name of the Plan was changed to the Pension Plan for the Employees of the Wool Bureau of Canada Limited effective January 1, 1988 and that the name of the Applicant was changed from The Wool Bureau of Canada Limited to Woolmark Americas, Ltd. in 1998.
8. The application appears to comply with section 78 and subsections 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
9. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

Your written notice must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

For further information, contact the registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 8th day of October, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario

[1]NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

Notices of Proposal to Make a Declaration

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Retirement Plan for Employees of Pigott Construction Limited and Participating Companies, Registration Number C-4989;**

TO: **Buck Consultants Limited**
P.O. Box 15
Suite 1500
95 Wellington Street West
Toronto ON M5J 2N7

Attention: Ms. Wafaa Babcock, F.S.A., F.C.I.A.
Administrator

Pigott Construction Ltd.
P.O. Box 2309
Hamilton ON L8N 3G7

Attention: W. Grant Dickinson
Vice-President, Finance
Employer

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Retirement Plan for Employees of Pigott Construction Limited and Participating Companies (the "Plan"), is registered under the Act as Registration Number C-4989; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and
3. The Plan was wound up by the employer effective December 31, 1991; and
4. A wind up report was filed by the employer and the Superintendent of Pensions approved the wind up report on September 17, 1992; and
5. All benefits and surplus assets were paid out of the plan in 1992 with no assets remaining in the Plan; and
6. In the year 2000, a deferred vested member of the Plan, Colin Holland, claimed he was omitted in error from the disbursement of benefits on wind up and provided evidence that he was entitled to a benefit upon wind up; and
7. Buck Consultants was appointed administrator of the Plan by the Superintendent of Financial Services on July 6, 2000.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan, under section 83 of the Act, that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. Colin Holland was entitled to a benefit from the Plan upon wind up but never received it; and
2. A supplementary wind up report for the Plan as at April 30, 2002, reveals that to provide the benefit for Colin Holland and to meet the expenses and other allowances incurred in determining and distributing his entitlement, would require an amount of $18,040 as at April 30, 2002; and
3. There are currently no assets in the Plan to provide the benefit entitlement of Colin Holland and other expenses; and

4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied; and
5. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention : The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 12th day of July, 2002.

K. David Gordon
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

[1]NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration Number 1039981;**

TO: **Morneau Sobeco**
895 Don Mills Road
One Morneau Sobeco Centre
Suite 700
Toronto ON M3C 3W3

Attention: Mr. David R. Kearney

Administrator

Gallaher Thorold Paper Co.
67 Front Street North
Thorold ON L2V 3Z7

Attention: Mr. David Rennie, Vice President, Human Resources

Employer

Ernst & Young Inc.
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Mr. Philip Kan, Manager

Trustee in Bankruptcy for Gallaher Thorold Paper Co.

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration Number 1039981 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and
3. On July 15, 2002, the Superintendent of Financial Services issued an Order dated July 12, 2002, that the Plan be wound up effective May 25, 1999; and
4. The Superintendent of the Financial Services Commission appointed Morneau Sobeco as the administrator (the "Administrator") of the Plan on July 10, 2002.

NOW THEREFORE TAKE NOTICE that I propose to consider to make a declaration, pursuant to section 83 of the Act, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan at wind up has been estimated to be 73.60%.
2. The employer, Gallaher Thorold Paper Co., was assigned into bankruptcy on June 15, 1999.
3. The trustee in bankruptcy for Gallaher Thorold Paper Co. has advised the Administrator that there are no funds available from the estate of Gallaher Thorold Paper Co. to make payment to the Plan.

4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York Ontario M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 2nd day of October, 2002.

K. David Gordon
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

[1]NOTE – PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28, respecting the **Pension Plan for Employees of Vulcan Packaging Inc. (the "Pension Plan"), Registration Number 0364323;**

TO: **Morneau Sobeco**
1500 Don Mills Road
Suite 500
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Partner

Administrator of the Pension Plan for Employees of Vulcan Packaging Inc.

AND TO: **Vulcan Packaging Inc.**
15 Bethridge Road
Rexdale ON M9W 1M6

Attention: Mr. Alex Telfer
President

Employer

AND TO: **Ernst & Young Inc.**
175 Commerce Valley Drive West
Suite 600
Thornhill ON L3T 7P6

Attention: Mr. Harold Reiter

Trustee in Bankruptcy, Vulcan Packaging Inc.

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Employees of Vulcan Packaging Inc., Registration No. 0364323 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c.28 (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective May 15, 1997; and
4. The Superintendent of Pensions initially appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on August 1, 1997 and on July 11, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche; and

NOW THEREFORE TAKE NOTICE I propose to consider to make a declaration, pursuant to section 83 of the Act, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Supplement to the Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of $1,252,900 as at May 31, 2002 and an estimated claim against the Guarantee Fund as at May 31, 2002 of $1,223,400.
2. Ernst & Young Inc. was appointed Trustee in Bankruptcy of Vulcan Packaging Inc. on May 15, 1997.

3. The Trustee in Bankruptcy for Vulcan Packaging Inc. has advised the Administrator that there are no funds available from the estate of Vulcan Packaging Inc. to make payment to the Pension Plan.
4. The Administrator has advised that there are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 3rd day of October, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

[1]NOTE — PURSUANT to section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the PBA, respecting **The Algoma Steel Inc. Salaried Employees Pension Plan for Employees in Canada, Registration Number 0335810;**

TO: **Morneau Sobeco**
895 Don Mills Road
Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. Al Kiel
Partner

Administrator

AND TO: **Algoma Steel Inc.**
105 West Street
Sault Ste. Marie ON P6A 7B4

Attention: Mr. Paul C. Finley
General Counsel and Corporate Secretary

Employer

AND TO: **The United Steelworkers of America**
c/o Days Inn, 320 Bay Street, Room 15
Sault Ste. Marie ON P6A 1X1

Attention: Mr. Ian Kersley
President

Local Union 2724

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Algoma Steel Inc. Salaried Employees Pension Plan for Employees in Canada, Registration No. 0335810 (the "Pension Plan"), is registered under the PBA;
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the PBA or the regulations made thereunder;
3. Algoma Steel Inc. ("Algoma") instituted proceedings under the *Companies' Creditors Arrangement Act*, and its Plan of Reorganization was approved by its creditors and sanctioned by the court on December 19, 2001;
4. The Pension Plan was terminated effective September 17, 2001, by Algoma Steel Inc. (in accordance with section 68 of the PBA; and
5. The Superintendent of Financial Services appointed Morneau & Sobeco as administrator (the "Administrator") of the Pension Plan on September 6, 2002.

NOW THEREFORE TAKE NOTICE that I propose to make a declaration, pursuant to section 83 of the PBA, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Report on the Plan Wind-up and Pension Benefits Guarantee Fund Application as at September 17, 2001, indicates an estimated funding deficiency of $79,977,000 and an estimated funded ratio of 75.68%.
2. The Superintendent of Financial Services and Algoma entered into an agreement dated January 29, 2002, which specifically requires Algoma to file the application for a

declaration that the Guarantee Fund applies to the Pension Plan.

3. The Superintendent of Financial Services is satisfied that Algoma could not meet the funding requirements of the PBA for the Plan, as of the effective date of the wind up of the Plan.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the PBA, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

For further information, contact the Registrar of the Tribunal by telephone at 416-226-7152, toll free at 1-800-668-0128 ext 7752, or by fax at 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 18th day of October, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
By Delegated Authority

[1]NOTE — PURSUANT TO section 112 of the PBA, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the PBA, respecting the **Non-Contributory Pension Plan Covering Hourly Paid Bargaining Unit Employees of Algoma Steel Inc., Registration Number 0335802;**

TO: **Morneau Sobeco**
895 Don Mills Road
Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. Al Kiel
Partner

Administrator

AND TO: **Algoma Steel Inc.**
105 West Street
Sault Ste. Marie ON P6A 7B4

Attention: Mr. Paul C. Finley
General Counsel and Corporate Secretary

Employer

AND TO: **The United Steelworkers of America**
68 Dennis Street
Sault Ste. Marie ON P6A 2W9

Attention: Mr. Tom Bonell
President, Local Union 2251

Union

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Non-Contributory Pension Plan Covering Hourly Paid Bargaining Unit Employees of Algoma Steel Inc. Registration No. 0335802 (the "Pension Plan"), is registered under the PBA;
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the PBA or the regulations made thereunder;
3. Algoma Steel Inc. ("Algoma") instituted proceedings under the *Companies' Creditors Arrangement Act*, and its Plan of Reorganization was approved by its creditors and sanctioned by the court on December 19, 2001;
4. The Pension Plan was terminated effective September 17, 2001, by Algoma in accordance with section 68 of the PBA; and
5. The Superintendent of Financial Services appointed Morneau Sobeco as administrator (the "Administrator") of the Pension Plan on September 6, 2002.

NOW THEREFORE TAKE NOTICE that I propose to make a declaration, pursuant to section 83 of the PBA, that the Guarantee Fund applies to the Pension Plan, for the following reasons:

1. The Report on the Plan Wind-up and Pension Benefits Guarantee Fund Application as at September 17, 2001, indicates that the Pension Plan has an estimated funding deficiency of $361,983,300 and an estimated funded ratio of 52.94%.
2. The Superintendent of Financial Services and Algoma entered into an agreement

dated January 29, 2002, which specifically requires Algoma to file the application for a declaration that the Guarantee Fund applies to the Pension Plan.

3. The Superintendent of Financial Services is satisfied that Algoma could not meet the funding requirements of the PBA for the Plan, as of the effective date of the wind up of the Plan.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the PBA, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

For further information, contact the Registrar of the Tribunal by phone at 416-226-7152, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 18th day of October, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
By Delegated Authority

[1]NOTE -- PURSUANT to section 112 of the PBA, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

Notices of Proposal to Refuse to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended (the "PBA");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under section 87(1) of the PBA, respecting the **Public Service Pension Plan, Registration No. 0208777;**

TO: **Gillis Zago Barristers LLP**
200 Main Street North
Brampton ON L6V 1P1

Attn: Mr. Stewart C.E. Gillis

Solicitors for Mr. George Polygenis (the "Applicant")

AND TO: **Ontario Pension Board**
1 Adelaide Street East, Suite 1100
Toronto ON M5C 2X6

Attn: Mr. Ignas Nastajus, Secretary
Adjudication & Policy Committees

Administrator

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER under section 87(1) of the PBA that the Pension Policy Committee of the Ontario Pension Board reconsider its decision denying a disability pension to the Applicant under section 14(1) of the Public Service Pension Plan, Registration No. 0208777 (the "Plan");

REASONS FOR THE REFUSAL:

1. The Applicant's employment as an LCBO branch manager ended in March 1997.
2. The Applicant applied for a disability pension under section 14(1) of the Plan. Section 14(1) of the Plan gives the Board the duty to determine whether an applicant is entitled to a disability pension. A Plan member with sufficient credit or continuous membership in the Plan is entitled to a disability pension if the Board finds the member to be "totally and permanently disabled" as defined in section 1 of the Plan:

   "totally and permanently disabled" means, in relation to an individual, suffering from a physical or mental impairment that prevents the individual from engaging in any employment for which the individual is reasonably suited by virtue of his or her education, training or experience and that can reasonably be expected to last for the remainder of the individual's lifetime.
3. Section 31(3) of the Plan authorizes the Board to make rules and procedures and to delegate its duties and responsibilities to a committee or other person.
4. The Board has established Disability Procedures and Adjudication Procedures setting out the rules and procedures which apply when a member applies for a disability pension.
5. The Adjudication Procedures provide a formal adjudication process in order to, *inter alia*, determine eligibility for disability benefits. The Adjudication Committee of the Board (the "Adjudication Committee") adjudicates the member's claim. The member has a right to appeal the decision to the Pension Policy Committee (the "Committee"). Article 7.5.7 of the Adjudication Procedures states, "The decision of the Pension Policy Committee shall be final."
6. The Adjudication Committee of the Ontario Pension Board (the "Board") rejected the Applicant's claim in November 2000, finding that he was not "totally and permanently disabled" as defined in section 1 of the Plan.
7. The Applicant appealed that decision to the Pension Policy Committee and submitted additional medical information in March 2001. The Committee met in May 2001 and

decided to request additional information in the form of an independent medical examination arranged by the Board's medical consultants. The Committee is authorized to request further information by article 7.5.4 of the Adjudication Procedures.

8. The Board's medical consultants received the findings of the independent medical examiner and issued their own summary report to the Committee.
9. On November 20, 2001, the Committee met and rejected the applicant's claim with written reasons, referred to in paragraphs 12 and 13 below.
10. On June 27, 2002, the Applicant requested the Superintendent of Financial Services (the "Superintendent") to issue an Order overturning the Committee's decision and either substituting a finding of disability or directing a reconsideration of the case.
11. The Superintendent can make an Order under section 87(1) of the PBA if he is of the opinion, on reasonable and probable grounds, that a pension plan is not being administered in accordance with the PBA, the regulations or the pension plan.
12. A "disability pension" is an ancillary benefit under s. 40 of the PBA. Section 10(1)5 of the PBA requires that the documents that create and support a pension plan set out the "requirements for entitlement under the pension plan to any pension benefit or ancillary benefit." Section 19(1) of the PBA states, "The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with this Act and the regulations."
13. The Committee's decision states that the Committee decided to uphold the Adjudication Committee's denial of the Applicant's disability pension application "after a careful review of the [Applicant]'s case file and the medical findings." The Committee found that the Applicant was not "totally and permanently disabled" as defined in section 1 of the Plan.
14. The Committee made its decision in accordance with the applicable rules and procedures established by the Board under the Plan for the consideration of disability pension applications and in accordance with the definition of "totally and permanently disabled" under the Plan.
15. For the reasons set out above, the Superintendent is not of the opinion, on reasonable and probable grounds, that the Plan is not being administered in accordance with the PBA, the regulations or the Plan.
16. Such and further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

[1]NOTE — PURSUANT to section 112 of the PBA, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

Your written notice must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE REQUESTED ORDER AS PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, October 11, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
By Delegated Authority

Orders that Pension Plans Be Wound Up

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA, relating to the **Pension Plan for Unionized Employees of Northern Globe Building Materials (Thorold Division), Registration Number 680405 (formerly C-104311) (the "Plan");**

TO: **Arthur Andersen Inc.**
4 King Street West
Suite 1050
Toronto ON M5H 1B6

Attention: Mr. David R. Kearney
Administrator

AND TO: **Striker Paper Canada, Inc.**
100 Ormond Street South
P.O. Box 10
Thorold ON L2V 3Y7

Attention: Ms. Patricia Gough, Manager
Employer

ORDER

ON April 29, 2002, the Deputy Superintendent, Pensions, of the Financial Services Commission of Ontario issued a Notice of Proposal to Make an Order dated April 25, 2002, to the Employer and to the Administrator of the Pension Plan for Unionized Employees of Northern Globe Building Materials (Thorold Division), Registration No. 680405 (the "Plan"), pursuant to section 69(1) of the Act, that the Plan be wound up in whole for those members of the Plan who ceased to be employed effective between November 30, 1998 and February 22, 1999.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that Plan be wound up in whole for those members of the Plan who ceased to be employed effective between November 30, 1998 and February 22, 1999.

REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the PBA.
2. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer, pursuant to clause 69(1)(d) of the PBA.
3. All or a significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the PBA.

THE ADMINISTRATOR IS REQUIRED, pursuant to section 89(5) of the PBA, to transmit a copy of this Order to the following persons:

Communications
Energy and Paper Workers Union of Canada
5890 Aspen Court
Niagara Falls ON L2G 7V3

Attention: Mr. Michael Lambert,
National Representative
Union

BDO Dunwoody Limited
Royal Bank Plaza
P.O. Box 33
Toronto ON M5J 2J9

Attention: Mr. Mark Chow
Receiver and Trustee in Bankruptcy for Striker Paper Canada, Inc.

DATED at North York, Ontario, June 20, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration Number 1039981(the "Plan");**

TO: **Morneau Sobeco**
1500 Don Mills Road
Suite 500
Toronto ON M3B 3K4

Attention: Mr. David R. Kearney

Administrator

AND TO: **Gallaher Thorold Paper Co.**
67 Front Street North
Thorold ON L2V 3Z7

Attention: Mr. David Rennie, Vice-President, Human Resources

Employer

ORDER

ON or about March 26, 2002, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated March 26, 2002, to the Employer and to the Administrator of the Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration Number 1039981 (the "Plan"), pursuant to section 69(1) of the Act, that the Plan be wound up in whole effective May 25, 1999.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective May 25, 1999.

REASONS:

1. There was a cessation or suspension of Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. The Employer failed to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. A significant number of members of the pension plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer, pursuant to clause 69(1)(d) of the Act.
4. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

DATED at North York, Ontario, this 12th day of July, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from
Superintendent of Financial Services

cc: **Communications**
Energy and Paper Workers Union of Canada
Locals 290 and 1521
5890 Aspen Court
Niagara Falls ON L2G 7V3

Attention: Michael Lambert

International Union of Operating Engineers
Local 772
370 Main Street East, Suite 302
Hamilton ON L8N 1J6

Attention: Mr. Greg Hoath

Ernst & Young Inc.
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Mr. Philip Kan

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act") ;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order, pursuant to section 69 of the Act, respecting the **Pension Plan for Executives of William H. Kaufman Inc., Registration No. 999631 (the "Plan");**

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal PQ H3G 1G3

Attention: Jean-Claude Lebel
Pension Actuary

Administrator

AND TO: **William H. Kaufman Inc.**
Kitchener Stn. C,
410 King St. West
P.O. Box 9005
Kitchener ON N2G 4J8

Attention: Stuart Snyder
Secretary Treasurer

Employer

REVISED ORDER

ON the 17th day of August, 2001, the Superintendent of Financial Services issued to William H. Kaufman Inc. (the "Employer") and to Standard Life Assurance Company, the administrator of the Plan (the "Administrator"), pursuant to section 69(1) of the Act, a Notice of Proposal to Make an Order that the Plan be wholly wound up effective July 21, 2000.

NO REQUEST for a hearing from the Employer or from the Administrator has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Pension Plan for Executives of William H. Kaufman Inc., Registration No. 999631, be wholly wound up effective July 21, 2000.

THE REASONS for this order are:

1. There was a cessation or suspension of Employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the Act.
2. The Employer failed to make contributions to the pension fund as required by the Act or the regulations within the meaning of clause 69(1)(b) of the Act.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), R. S. C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the Act.
4. A significant number of members of the Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer within the meaning of clause 69(1)(d) of the Act.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued within the meaning of clause 69(1)(e) of the Act.

THE ADMINISTRATOR IS REQUIRED, pursuant to section 69(2) of the Act, to give notice of this Order to the following persons:

Ernst & Young Inc.
Toronto-Dominion Centre
222 Bay Street
P.O. Box 251
Toronto ON M5K 1J7

Attention: Philip Kan

Interim Receiver and Receiver and Trustee in Bankruptcy for William H. Kaufman Inc.

DATED at North York, Ontario, this 14th day of November, 2001.

Revised Order signed at North York, Ontario, this 7th day of August, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from
Superintendent of Financial Services
Financial Services Commission of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order, pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Pension Plan for the Employees of Kaufman Footwear, Division of William H. Kaufman Inc., Registration No. 0340349 (the "Pension Plan");**

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal PQ H3G 1G3

Attention: Jean-Claude Lebel
Pension Actuary

Administrator

AND TO: **Kaufman Footwear, Division of William H. Kaufman Inc.**
P.O. Box 9005
410 King Street West
Kitchener ON N2G 4J8

Attention: S.I. Snyder
Vice President, Finance

Employer

AND TO: **Ernst & Young Inc.**
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Jorden Sleeth

Receiver and Trustee in Bankruptcy for William H. Kaufman Inc.

ORDER

ON the 27th day of June, 2002, the Deputy Superintendent, Pension Division, issued a Notice of Proposal to Make an Order dated the 25th day of June, 2002, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act"), to the Administrator and to the Employer to wind up in whole the Pension Plan for the Employees of Kaufman Footwear, Division of William H. Kaufman Inc., Registration No. 0340349.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal (the "Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the Pension Plan for the Employees of Kaufman Footwear, Division of William H. Kaufman Inc., Registration No. 0340349, be wound up in whole, effective July 21, 2000, for the following reasons:

1. There was a cessation or suspension of Employer contributions to the pension fund.
2. A significant number of the members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result the reorganization of the business of the Employer.
3. The Employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada).
4. A significant number of members of the Pension Plan cease to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.

5. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.

DATED at Toronto, Ontario, this 11th day of September, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from the
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order, pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Pension Plan for the Employees of Kaufman of Collingwood, The Furniture Division of William H. Kaufman Inc., Registration No. 0340091 (the "Pension Plan");**

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal PQ H3G 1G3

Attention: Jean-Claude Lebel
Pension Actuary

Administrator

AND TO: **Kaufman of Collingwood, The Furniture Division of William H. Kaufman Inc.**
201 Balsam Street
Collingwood ON L9Y 3Y7

Attention: Barry Knox
Controller

Employer

AND TO: **Ernst & Young Inc.**
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Jorden Sleeth

Receiver and Trustee in Bankruptcy for William H. Kaufman Inc.

ORDER

ON the 27th day of June, 2002, the Deputy Superintendent, Pension Division, issued a Notice of Proposal to Make an Order dated the 25th day of June, 2002, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act"), to the Administrator and to the Employer to wind up in whole the Pension Plan for the Employees of Kaufman of Collingwood, The Furniture Division of William H. Kaufman Inc., Registration No. 0340091.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal (the "Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the Pension Plan for the Employees of Kaufman of Collingwood, The Furniture Division of William H. Kaufman Inc., Registration No. 0340091, be wound up in whole, effective July 14, 2000, for the following reasons:

1. There was a cessation or suspension of Employer contributions to the pension fund.
2. A significant number of the members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result the reorganization of the business of the employer.
3. The Employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada).
4. A significant number of members of the Pension Plan cease to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.

5. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.
6. All or part of the Employer's business or all or part of the assets of the Employer's business are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for the members of the Employer's pension plan who becomes employees of the person.

DATED at Toronto, Ontario, this 11th day of September, 2002.

Tom Golfetto
Director, Pension Plans Branch
by Delegated Authority from the
Superintendent of Financial Services

Consents to Payments out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Pension Plan for Salaried Employees of Newman Steel Ltd. and its Associated Companies, Registration No. 283481;**

TO: **PricewaterhouseCoopers Inc.**
c/o Blake, Cassels & Graydon LLP
Box 25, Commerce Court West
199 Bay Street
Toronto ON M5L 1A9

Attention: Elizabeth Boyd
Counsel to Pricewaterhouse-Coopers Inc.
Reesha Hosein
Counsel to Pricewaterhouse Coopers Inc.

Applicant and receiver and manager of Newman Steel Ltd.

KPMG Inc.
Suite 3300, Commerce Court West
P.O. Box 31 Stn. Commerce Court
Toronto ON M5L 1B2

Attention: Michael Creber
Senior Vice-President

Plan Administrator

CONSENT

ON or about May 31, 2002, the Superintendent of Financial Services caused to be served on the Applicant, PricewaterhouseCoopers Inc. and KPMG Inc., the Plan Administrator, a Notice of Proposal dated May 28, 2002, to consent, pursuant to subsection 78(1) of the Act, to a payment out of the Pension Plan for Salaried Employees of Newman Steel Ltd. and its Associated Companies, Registration No. 283481 (the "Plan"), to PricewaterhouseCoopers Inc. in the amount of $206,400 (representing 40% of the surplus of $516,000 determined to be in the Plan as at November 4, 1991), plus the gains (net losses) thereon from November 4, 1991 to the date of payment, less 40% of all expenses incurred in connection with the administration of the wind up of the Plan, including, without limitation, 40% of the reasonable legal and actuarial fees and expenses of those Plan members included in the surplus sharing group who are represented by Anthony Wellenreiter of the law firm Wellenreiter & Wellenreiter.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for Salaried Employees of Newman Steel Ltd. and its Associated Companies, Registration No. 283481, to PricewaterhouseCoopers Inc., an amount of $206,400 (representing 40% of the surplus of $516,000 determined to be in the Plan as at November 4, 1991), plus the gains (net losses) thereon from November 4, 1991, to the date of payment, less 40% of all expenses incurred in connection with the administration of the wind up of the Plan, including, without limitation, 40% of the reasonable legal and actuarial fees and expenses of those Plan members included in the surplus sharing group who are represented by Anthony Wellenreiter of the law firm Wellenreiter & Wellenreiter.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Sharing Agreement) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 16th day of July, 2002

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from the
Superintendent of Financial Services

cc: Mr. Husein Djuk
P.O. Box 312
North Rustico PEI C0A 1X0

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Pension Plan for Hourly Employees of BICC Phillips Inc. Located at its Brockville Factory, Registration No. 293753;**

TO: **BICC Canada Inc.**
c/o Balfour Beatty Construction, Inc.

Attention: Ms. Joanne Bonfiglio
254 South Main Street
New City NY 10956 USA

CONSENT

ON or about June 28, 2002, the Superintendent of Financial Services caused to be served on BICC Canada Inc. a Notice of Proposal dated June 26, 2002, to consent, pursuant to subsection 78(4) of the Act, to payment out of the Pension Plan for Hourly Employees of BICC Phillips Inc. Located at its Brockville Factory, Registration No. 293753, to BICC Canada Inc. in the amount of $728,818 as at August 22, 2000, adjusted for expenses, plus investment earnings thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for Hourly Employees of BICC Phillips Inc. Located at its Brockville Factory, Registration No. 293753, of $728,818 as at August 22, 2000, adjusted for expenses, plus investment earnings thereon to the date of payment, to BICC Canada Inc.

DATED at Toronto, Ontario, this 19th day of August, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from the
Superintendent of Financial Services

cc: Mr. Duncan Richardson, Mercer Human Resource Consulting
Mr. William Greenham
Mr. Roger Eyre
Mr. Malcolm Blair
Mr. Giovanni Hrelia
Mr. Robert C. Andress
Mr. W.G. Haggart
Mr. Earl G. Mott
Mr. J. Richard Gill
Mr. Arthur W. Lane
Mr. Donald W. Conlin

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Pension Plan for Salaried Union Employees of BICC Phillips Inc. (Located at Brockville, Ontario), Registration No. 370205**

TO: **BICC Canada Inc.**
c/o Balfour Beatty Construction, Inc.

Attention: Ms. Joanne Bonfiglio
254 South Main Street
New City NY 10956 USA

CONSENT

ON or about June 24, 2002, the Superintendent of Financial Services caused to be served on BICC Canada Inc. a Notice of Proposal dated June 24, 2002, to consent, pursuant to subsection 78(4) of the Act, to payment out of the Pension Plan for Salaried Union Employees of BICC Phillips Inc. (Located at Brockville, Ontario), Registration No. 370205, to BICC Canada Inc. in the amount of $23,735 as at August 22, 2000, adjusted for expenses, plus investment earnings thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for Salaried Union Employees of BICC Phillips Inc. (Located at Brockville, Ontario), Registration No. 370205, of $23,735 as at August 22, 2000, adjusted for expenses, plus investment earnings thereon to the date of payment, to BICC Canada Inc.

DATED at Toronto, Ontario, this 19th day of August, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from the
Superintendent of Financial Services

cc: Mr. Duncan Richardson, Mercer Human Resource Consulting
Mr. Willard M. Burke
Mr. Donald W. Conlin
Mr. Arthur W. Lane

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of **the Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration No. 1050210;**

TO: **Beta Brands Limited**

Attention: Mr. George Harrison, CFO & Secretary
1156 Dundas Street East
London ON N5W 5Y4

CONSENT

ON or about June 19, 2002, the Superintendent of Financial Services caused to be served on Beta Brands Limited a Notice of Proposal dated June 19, 2002, to consent, pursuant to subsection 78(4) of the Act, to payment out of The Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration No. 1050210, to Beta Brands Limited in the amount of $17,376.10 as at June 30, 2001, plus interest, at the fund rate of return thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of The Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration No. 1050210, of $17,376.10 as at June 30, 2001, plus interest, at the fund rate of return thereon to the date of payment, to Beta Brands Limited.

DATED at Toronto, Ontario, this 19th day of August, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from the
Superintendent of Financial Services

cc: Mr. Eric Poirier, Mercer Human Resource Consulting
Mr. Michael E. Labute, Mercer Human Resource Consulting

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Boehringer Ingelheim (Canada) Ltd./Ltée Employees Pension Plan, Registration No. 356162;**

TO: **Boehringer Ingelheim (Canada) Ltd./Ltée**

Attention: Ms. Louise Muller
Manager, Human Resources
5180 South Service Road
Burlington ON L7L 5H4

CONSENT

ON or about July 2, 2002, the Superintendent of Financial Services caused to be served on Boehringer Ingelheim (Canada) Ltd./Ltée a Notice of Proposal dated July 2, 2002 to consent, pursuant to subsection 78(4) of the Act, to payment out of the Boehringer Ingelheim (Canada) Ltd./Ltée Employees' Pension Plan, Registration No. 356162, to Boehringer Ingelheim (Canada) Ltd./Ltée in the amount of $1,351,669.22 as at January 16, 2002.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Boehringer Ingelheim (Canada) Ltd./Ltée Employees' Pension Plan, Registration No. 356162, of $1,351,669.22 as at January 16, 2002, to Boehringer Ingelheim (Canada) Ltd./Ltée.

DATED at Toronto, Ontario, this 21st day of August, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from the
Superintendent of Financial Services

cc: Ms. Renate Leis, Buck Consultants Limited

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Wajax Industries Limited Pension Plan, Registration No. 281006;**

TO: **Wajax Limited**
3280 Wharton Way
Mississauga Ontario L4X 2C5

Attention: Barbara Haddad
Manager, Compensation & Benefits

CONSENT

ON or about June 12, 2002, the Superintendent of Financial Services caused to be served on Wajax Limited a Notice of Proposal dated June 10, 2002, to consent, pursuant to subsection 78(4) of the Act, to payment out of the Wajax Industries Limited Pension Plan, Registration No. 281006, to Wajax Limited in the amount of $21,160.44 as at November 30, 2001, plus investment earnings thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Wajax Industries Limited Pension Plan, Registration No. 281006, of $21,160.44 as at November 30, 2001, plus interest at the fund rate of return thereon to the date of payment, to Wajax Limited.

DATED at Toronto, Ontario, this 22nd day of August, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from the
Superintendent of Financial Services

Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans — Subsection 83(1) of the PBA

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28, respecting the **Revised Pension Plan for Employees of the Employer (the "Pension Plan"), Registration Number 0224923;**

TO: **The Canada Life Assurance Company**
330 University Avenue
Toronto ON M5G 1R8

Attention: Ms. Milica Stojsin
Plan Wind-up Consultant

Administrator of the Revised Pension Plan for Employees of the Employer

AND TO: **Brown & Collett Limited**
2365 Matheson Blvd.
Mississauga ON L4W 5C2

Attention: Mr. R.W. Bernard
Controller

Employer

AND TO: **PricewaterhouseCoopers Inc. (formerly Price Waterhouse Limited)**
5700 Yonge Street
Suite 1900
North York ON M4M 4K7

Attention: Mr. Craig Munro

Receiver and Trustee in Bankruptcy for Brown & Collett Limited

DECLARATION

WHEREAS:

1. The Revised Pension Plan for Employees of the Employer, Registration Number 0224923 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective March 1, 1996; and
4. The Superintendent of Pensions appointed Canada Life Assurance Company as the administrator (the "Administrator") of the Pension Plan on June 10, 1996; and
5. On February 26, 2002, I issued a Notice of Proposal dated February 15, 2002, to Make a Declaration that the Guarantee Fund applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89(6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to section 83 of the Act, that the PBGF applies to the Pension Plan for the following reasons:

1. The Supplement to the Actuarial Report filed by the Administrator indicates an estimated claim against the Guarantee Fund of $436,300 as at March 31, 2002.
2. PricewaterhouseCoopers Inc. was appointed Trustee in Bankruptcy of Brown & Collett Limited on March 1, 1996 and as Receiver on April 22, 1996.

3. The Trustee in Bankruptcy has advised the Administrator that there are no funds available from the estate of Brown & Collett Limited to make payment to the Pension Plan.

DATED at North York, Ontario, this 5th day of July, 2002.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28, respecting the **Retirement Plan for Salaried Employees of Airvector Inc. (the "Pension Plan"), Registration Number C-9339;**

TO: **Morneau Sobeco**
Deloitte & Touche Inc.
1500 Don Mills Road
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Partner

Administrator of the Retirement Plan for Salaried Employees of Airvector Inc.

AND TO: **Airvector Inc.**
201 Speers Road
P.O. Box 430
Oakville ON L6J 5A8

Attention: Camile Adib
President

Employer

DECLARATION

WHEREAS:

1. The retirement Plan for Salaried Employees of Airvector Inc., Registration No. C-9339 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c.28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective December 31, 1986; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on March 20, 1997 and on August 11, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche Inc.; and
5. On March 1, 2002, the Deputy Superintendent, Pension Division, issued a Notice of Proposal dated March 1, 2002, to Make a Declaration that the Guarantee Fund applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Addendum to the Actuarial Valuation Report filed by the Administrator indicates an estimated claim against the Guarantee Fund of $258,900.00 as at December 31, 2001.
2. The place of business of the Employer is closed due to the bankruptcy of the Employer.
3. The Administrator has advised since the Employer is no longer in business, there are no further funds expected from the Employer or from any other sources for the Pension Plan.

DATED at North York, Ontario, this 25th day of July, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from the
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28, respecting the **Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc. (the "Pension Plan"), Registration Number 0379214;**

TO: **Morneau Sobeco**
Deloitte & Touche Inc.
1500 Don Mills Road
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Partner

Administrator of the Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc.

AND TO: **Vulcan Packaging Inc.**
15 Bethridge Road
Rexdale ON M9W 1M6

Attention: Mr. Alex Telfer
President

Employer

AND TO: **Ernst & Young Inc.**
175 Commerce Valley Drive West
Suite 600
Thornhill ON L3T 7P6

Attention: Mr. Harold Reiter

Trustee in Bankruptcy, Vulcan Packaging Inc.

AND TO: **CAW Local 1008**
467 St. Clair Street
Chatham ON N7L 3K6

Attention: Mr. Joe McCabe

Union

DECLARATION

WHEREAS:

1. The Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc., Registration No. 0379214 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28 (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "PBGF"), by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective May 15, 1997; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on August 1, 1997; and
5. On February 15, 2002, I issued a Notice of Proposal dated February 12, 2002, to Make a Declaration that the PBGF applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the Act, that the PBGF applies to the Pension Plan for the following reasons:

1. The Supplement to the Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of $861,100 as at August, 1, 2001 and an estimated claim against the Guarantee Fund as at August 1, 2001 of $768,500.

2. Ernst & Young Inc. was appointed Trustee in Bankruptcy of Vulcan Packaging Inc. on May 15, 1997.
3. The Administrator has advised that they filed a proof of claim for the asset shortfall but is of the opinion that no recovery will be realized of the proof of claim.

DATED at North York, Ontario, this 2nd day of August, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Retirement Plan for Employees of Pigott Construction Limited and Participating Companies, Registration Number C-4989;**

TO: **Buck Consultants Limited**
Suite 1500
95 Wellington Street West
Toronto ON M5J 2N7

Attention: Ms. Wafaa Babcock, F.S.A., F.C.I.A.

Administrator

Pigott Construction Ltd.
P.O. Box 2309
Hamilton ON L8N 3G7

Attention: W. Grant Dickinson
Vice-President, Finance

Employer

DECLARATION

WHEREAS:

1. The Retirement Plan for Employees of Pigott Construction Limited and Participating Companies (the "Plan"), is registered under the Act as Registration Number C-4989; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Plan was wound up by the Employer effective December 31, 1991; and
4. A wind up report was filed by the Employer; and the Superintendent of Pensions approved the wind up report on September 17, 1992; and
5. All benefits and surplus assets were paid out of the plan in 1992 with no assets remaining in the Plan; and
6. In the year 2000, a deferred vested member of the Plan, Colin Holland, claimed he was omitted in error from the disbursement of benefits on wind up, and provided evidence that he was entitled to a benefit upon wind up; and
7. Buck Consultants was appointed administrator of the Plan by the Superintendent of Financial Services on July 6, 2000; and.
8. On July 15, 2002, the Deputy Superintendent, Pensions, issued a Notice of Proposal, dated July 12, 2002, to Make a Declaration that the Guarantee Fund applies to the Plan; and
9. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE THAT I DECLARE, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. Colin Holland was entitled to a benefit from the Plan upon wind up but never received it; and
2. A supplementary wind up report for the Plan as at April 30, 2002, reveals that to provide the benefit for Colin Holland and to meet the expenses and other allowances incurred in determining and distributing his entitlement, would require an amount of $18,040 as at April 30, 2002; and
3. There are currently no assets in the Plan to provide the benefit entitlement of Colin Holland and other expenses; and

4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

DATED at North York, Ontario, this 9th day of September, 2002.

Tom Golfetto, Director
Pension Plans Branch
By Delegated Authority from the
Superintendent of Financial Services

Allocations of Money from the Pension Benefits Guarantee Fund

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28;

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c.28, respecting the **Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Salaried Non-Managerial Non-Unionized Employees), Registration Number 597948;**

TO: **Ernst & Young Inc.**
222 Bay Street
P.O. Box 251
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Philip Kan, Manager

Administrator of the Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Salaried Non-Managerial Non-Unionized Employees)

AND TO: **Forest City International Trucks Ltd.**
3003 Page Street
London ON N5V 4J1

Attention: John Parliament, Controller

Employer

ALLOCATION

WHEREAS on the 23rd day of May, 2001, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c.28 (the "Act"), that the Pension Benefits Guarantee Fund (the "PBGF") applies to the Retirement Benefit Plan for the Employees of Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Salaried Non-Managerial Non-Unionized Employees), Registration Number 597948 (the "Plan");

NOW THEREFORE I shall allocate from the PBGF and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $271,900 determined as of December 31, 2001, to provide, together with the Ontario assets for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the PBGF but not required to provide such benefits shall be returned to the PBGF.

DATED at North York, Ontario this 17th day of June, 2002.

K. David Gordon
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28;

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c.28, respecting the **Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Limited, Registration Number 315176;**

TO: **Arthur Andersen Inc.**
Suite 1050
4 King Street West
Toronto ON M5H 1B6

Attention: Mr. Lawrence A. Contant
Administrator

United Steelworkers of America
1291 Matheson Boulevard East
Mississauga ON L4W 1R1

Attention: Ms. Peggy McComb
Union

ALLOCATION

WHEREAS on the 28th day of August, 2001, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c.28 (the "Act"), that the Pension Benefits Guarantee Fund (the "PBGF") applies to the Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Limited, Registration Number 315176 (the "Plan");

NOW THEREFORE I shall allocate from the PBGF and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $371,800 to provide, together with the Ontario assets for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the PBGF but not required to provide such benefits shall be returned to the PBGF.

DATED at North York, Ontario this 17th day of June, 2002.

K. David Gordon
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28, respecting the **Retirement Plan for Salaried Employees of Airvector Inc. (the "Pension Plan"), Registration Number C-9339;**

TO: **Morneau Sobeco**
Deloitte & Touche Inc.
1500 Don Mills Road
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Partner

Administrator of the Retirement Plan for Salaried Employees of Airvector Inc.

ALLOCATION

WHEREAS on July 2002, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Retirement Plan for Salaried Employees of Airvector Inc., Registration Number C-9339 (the "Pension Plan");

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $258,900 which together with the Ontario assets of the Pension Plan, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 2nd day of August, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28, respecting the **Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc. (the "Pension Plan"), Registration Number 0379214;**

TO: **Morneau Sobeco**
Deloitte & Touche Inc.
1500 Don Mills Road
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Partner

Administrator of the Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc.

ALLOCATION

WHEREAS on August 2nd, 2002, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act"), that the Pension Benefits Guarantee Fund (the "PBGF") applies to the Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc., Registration Number 0379214 (the "Pension Plan");

NOW THEREFORE I shall allocate from the PBGF and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $768,500 which together with the Ontario assets of the Pension Plan, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the PBGF but not required to provide such benefits shall be returned to the PBGF.

DATED at North York, Ontario, this 2nd day of August, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under section 83 of the Act relating to the **Retirement Plan for Employees of Pigott Construction Limited and Participating Companies, Registration Number C-4989;**

TO: **Buck Consultants Limited**
Suite 1500
95 Wellington Street West
Toronto ON M5J 2N7

Attention: Ms. Wafaa Babcock, F.S.A., F.C.I.A.
Administrator

AND TO: **Pigott Construction Ltd.**
P.O. Box 2309
Hamilton ON L8N 3G7

Attention: W. Grant Dickinson,
Vice-President, Finance
Employer

ALLOCATION

WHEREAS on the 12th day of July 2002, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c.28 (the "Act"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Retirement Plan for Employees of Pigott Construction Limited and Participating Companies, Registration Number C-4989 (the "Plan");

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $18,040 to provide, together with the Ontario assets, if any, for the benefit entitlement of Colin Holland under the Plan, determined under subsections 34(5) and 34(6) of the Regulation, and to pay the reasonable administration costs of settling his entitlement. Any money allocated from the Guarantee Fund but not required to provide such benefit or costs shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 9th day of September, 2002.

K. David Gordon
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

TRIBUNAL ACTIVITIES

Appointments of Tribunal Members

Name and O.C.	Effective Appointment Date	Expiry Date
Milczynski, Martha (Chair)		
O.C. 1622/2001	June 20, 2001	June 19, 2004
O.C. 1665/99	October 6, 1999	July 7, 2001
O.C. 1808/98	July 8, 1998	October 6, 1999
McNairn, Colin (Vice-Chair)		
O.C. 1623/2001	June 20, 2001	June 19, 2004**
O.C. 1809/98	July 8, 1998	July 7, 2001
Corbett, Anne (Vice-Chair Acting)		
O.C. 1438/2001	June 20, 2001	June 19, 2004**
Ashe, Kevin		
O.C. 1510/2002	September 26, 2002	September 25, 2005
Bharmal, Shiraz Y.M.		
O.C. 1511/2002	September 9, 2002	September 8, 2005
Erlichman, Louis		
O.C. 439/2002	January 23, 2002	January 22, 2005**
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
Gavin, Heather		
O.C. 440/2002	January 23, 2002	January 22, 2005**
O.C. 11/99	January 13, 1999	January 12, 2002
Litner, Paul W.		
O.C. 1512/2002	September 9, 2002	September 8, 2005
Martin, Joseph P.		
O.C. 1626/2001	June 20, 01	June 19, 2004**
O.C. 1810/98	July 8, 1998	July 7, 2001
Moore, C.S. (Kit)		
O.C. 1625/2001	June 20, 2001	June 19, 2004**
O.C. 1591/98	July 1, 1998	June 30, 2001
Short, David A.		
O.C. 2118/2001	October 24, 2001	October 23, 2004**
Vincent, J. David		
O.C. 2119/2001	October 24, 2001	October 23, 2004**
Wires, David E.		
O.C. 2166/99	February 26, 2000	February 25, 2003
O.C. 257/97	February 27, 1997	February 26, 2000

****Or on the day FSCO/OSC merges, if earlier**

Pension Hearings Before the Financial Services Tribunal

Imperial Oil Limited

Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc. Registration Number 344002, FST File Number P0130-2000,

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve partial wind up reports in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each wind up report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind up period; (b) apply the grow-in provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial wind up; and (d) provide for the distribution of assets related to the partial wind up group.

A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice of Proposal in this matter to delete reference to (d) above.

A hearing and preliminary motion with respect to answers to interrogatories was held on July 25, 2001. The Tribunal ordered the Superintendent to respond to the first and second set of the Applicant's interrogatories within six weeks of the date of the order subject to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies. Written Reasons for Order dated September 10, 2001, were published in Volume 11, Issue 1 of the Pension Bulletin.

A continuation of the pre-hearing conference was held on December 20, 2001. The pre-hearing conference was adjourned to allow the parties to bring motions with respect to answers to interrogatories. On July 24, 2002, the Tribunal heard two motions. The Applicant's notice of motion dated June 7, 2002, asked for an order of the Tribunal directing the Superintendent to provide further and better answers to some of its interrogatories. The Tribunal made an order directing the Superintendent to respond to certain of the interrogatories but with some modifications. Reasons for Order dated September 11, 2002, are published in this bulletin on page 102. The time for the Superintendent's response under this Order was extended by Consent Order dated October 22, 2002.

The Superintendent's notice of motion dated June 5, 2002, asked for an order of the Tribunal directing the Applicant to answer those interrogatories it had served on the Applicant on October 11, 2001, that remained outstanding. The Tribunal made an order directing the Applicant to respond to certain of the interrogatories but with some modifications. The Reasons for Order dated September 20, 2002, are published in this bulletin on page 120.

The pre-hearing conference is scheduled to resume on December 18, 2002.

Marshall-Barwick (formerly Marshall Steel Limited), Registration Number 0968081, FST File Number P150-2001;

On January 16, 2001, Marshall-Barwick Inc. (formerly Marshall Steel Limited) requested a hear-

ing in respect of the Superintendent's Notice of Proposal dated December 12, 2000. The Superintendent is proposing to refuse to approve a Partial Wind Up Report as at August 28, 1992, respecting the Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies in relation to employees who ceased to be employed by Marshall Steel Limited as a result of the closure of its plant in Milton, Ontario. The Superintendent's basis for the Notice of Proposal is that the Report does not protect the interests of all those affected by the partial wind up, specifically Mr. Jeffrey C. Marshall, an employee who was terminated during the wind up period. On June 4, 2001, Jeffrey G. Marshall applied for party status.

A pre-hearing conference was held on August 13, 2001, at which time Mr. Marshall was granted full party status. The hearing scheduled for November 29 and 30, 2001, was adjourned as a result of a joint request made by the parties on November 6, 2001. The reason for the request was due to the applicant providing Mr. Marshall with actuarial data in respect of Mr. Marshall's benefit entitlements. Mr. Marshall required additional time to obtain expert advice in respect of the information. The hearing was held on September 9, 2002. The decision is reserved.

Independent Order of Foresters Fieldworkers, Registration Number 0354399, FST File Number P155-2001:

On August 12, 2001, The Independent Order of Foresters ("IOF") requested a hearing with respect to the Superintendent's Notice of Proposal dated March 19, 2001, to refuse to consent to an application for the payment of the surplus of the IOF Fieldworkers Pension Plan to the employer. The Superintendent proposed to refuse consent on the basis that she was not satisfied that the Plan had a surplus and provided for the payment of any surplus to the employer on the wind up of the Plan.

A pre-hearing conference was held on July 4, 2001, at which Mr. Irvin Grainger was joined as a party to the proceeding. The pre-hearing conference continued on July 27, 2001, at which time it was agreed that a settlement conference would be held on November 13, 2001. A motion by IOF for a determination of the appropriate manner and form of giving notice of the hearing in this matter was heard on December 7, 2001, by a panel of the Tribunal and was followed by a further continuation of the pre-hearing conference. At the motion hearing it was ordered that notice of hearing be by way of national newspaper publication, and that the notice also be provided by ordinary mail to all members and former members affected by the wind up. Written reasons for Orders made on December 7, 2001, were published in Volume 11, Issue 2 of the Pension Bulletin. On June 12, 2001, the Superintendent and IOF made a joint request that the hearing in this matter proceed in respect of the issue of whether the Plan provided for the payment of surplus to IOF, the employer, but that the hearing in respect of the issue of whether there was any surplus in the Plan be deferred. The request was granted and the panel held a hearing on the first of the two issues on June 18, 2002. The Tribunal concluded that the Plan did not provide for the payment of surplus to IOF. As it was unnecessary, therefore, to decide whether the Plan had a surplus, the Tribunal directed the Superintendent to carry out the proposal in the Notice of Proposal to refuse to consent to the payment of any surplus in the Plan to IOF. The Reasons for Decision dated September 16, 2002, are published in this bulletin on page 110.

Camco Inc. Pension Plan Number 4, Registration Number 0583302 to Camco Inc. Pension Plan Number 7, Registration Number 0583336, FST File Number P160-2001;

On May 14, 2001, Camco Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 30, 2001, to refuse to consent to a transfer of assets from the Camco Inc. Pension Plan 4, Registration Number 0583302 to the Camco Inc. Pension Plan No. 7, Registration Number 0583336.

The basis for the Notice of Proposal was that the asset transfer does not protect the pension benefits and other benefits of the former members of Plan 4 under subsection 81 (5) of the *Pension Benefits Act*.

A pre-hearing conference was held on September 24, 2001. The settlement conference scheduled for December 17, 2001, was rescheduled to February 7, 2002, after which settlement discussions continued. On September 10, 2002, the Tribunal was advised the parties have reached a settlement.

Consumers Packaging Inc., Pension Plan II, Registration Number 0998682, FST File Number P162-2001;

On May 17, 2001, Consumers Packaging Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated April 20, 2001, to refuse to approve a Partial Wind Up Report filed by Consumers Packaging Inc. on May 19, 2000, with respect to a partial wind up of the Consumers Packaging Inc. Pension Plan II, Registration Number 0998682, as at May 7, 1997, and to refuse to register an amendment to such Pension Plan filed by Consumers Packaging Inc. on May 19, 2000, titled Amendment # 2.

The basis for the Notice of Proposal was that Consumers Packaging Inc. filed a Partial Wind Up Report in 1997. The Superintendent issued two Notices of Proposal in 1999 ordering Consumers Packaging Inc. to accept as members of the Plan certain replacement call-in employees and refusing to approve the 1997 Partial Wind Up Report on the grounds that the replacement call-in employees were not included in the Report and that "grow-in" to plant closure benefits was not provided to unionized hourly employees affected by the partial wind up. Consumers Packaging Inc. requested a hearing before the Financial Services Tribunal with respect to both Notices of Proposal. The hearing concerning the call-in employees was settled by the parties and Consumers Packaging Inc. accepted as members of the Plan those replacement call-in employees who met certain conditions. The hearing request regarding the "grow-in" benefits was withdrawn. Consumers Packaging Inc. was ordered to file an amended Partial Wind Up Report. In addition, in 1997, Consumers Packaging filed an application to register Amendment # 2 to the Plan which provided enhanced bridge benefits to some members.

On May 19, 2000, Consumers Packaging filed a revised Partial Wind Up Report (the "revised Report") and a revised application to register Amendment #2 (the "revised Amendment"). The Superintendent issued the April 20, 2001 Notice of Proposal stating reasons that the revised Amendment is void pursuant to clause 14(1)(c) of the *Pension Benefits Act*, and that the revised Report does not meet the requirements of the *Pension Benefits Act* pursuant to subsection 70(5), because the commuted value of the pension benefits and ancillary benefits for the affected members is calculated based on the revised Amendment, which is void under the Act. The revised Report does not protect the interests of the members and former members of the Plan for the same reason.

The Superior Court of Justice, Commercial List, issued an Order, dated May 23, 2001, stating that any suit, action, enforcement process, extra-judicial proceeding, regulatory, administrative or other proceeding against or in respect of Consumers Packaging Inc. already commenced be stayed and suspended until and including June 22, 2001. A further Order was issued on June 18, 2001, extending the stay period until August 15, 2001 and again until October 1, 2001. On October 1, 2001, a Pension Assumption Agreement was made. A pre-hearing conference was held on February 19, 2002.

A motion brought by Consumers Packaging for an order compelling the Superintendent to answer certain interrogatories was heard on April 18, 2002, at which time the motion was dismissed. The hearing was held on July 29 and 31, 2002. The decision is reserved.

CBS Canada Co., Westinghouse Canada Inc. Pension Plan, Registration Numbers 348409 and 526632, FST File Number P164-2001;

On June 8, 2001, CBS Canada Co., the successor to Westinghouse Canada Inc., requested hearings in connection with the Superintendent's Notices of Proposal dated May 9 and 15, 2001, to refuse to approve various Partial Wind Up Reports in respect of the Salaried Employees Pension Plan and the Hourly Paid Employees Pension Plan of Westinghouse Canada Inc. The partial wind ups were triggered by the closure by ABB Canada Inc. of its plants in London, Ontario; St. Jean, Quebec; and Burlington, Ontario, at which it carried on businesses acquired from Westinghouse Canada Inc., and by the closure by Westinghouse Canada Inc. of its Motors Division plant in Hamilton, Ontario.

The basis for each Notice of Proposal was that the relevant Partial Wind Up Report failed to provide employer request early retirement benefits and related bridge benefits, contemplated by each Plan, to all members of the partial wind up group whose age plus years of service equaled at least 55 and because the Report failed to provide for the distribution of surplus relating to the partial wind up group.

On June 19, 2001, CAW Canada, which represented the employees who were members of the Westinghouse Hourly Paid Employees Pension Plan, filed an application for party status in these proceedings. At a pre-hearing conference on November 5, 2001, CAW Canada was granted party status in the proceedings concerning the Notices of Proposal relating to the Hourly Employees Pension Plan and was given limited rights to participate in the proceedings concerning the Notices of Proposal relating to the Salaried Employees Pension Plan. The various proceedings were directed to be heard together.

At a continuation of the pre-hearing conference held on November 29, 2001, a hearing was scheduled for February 4-5, 2002 to deal with several jurisdictional issues to be brought on by motion of CBS Canada Co. Those issues included the following:

1. whether the Superintendent was entitled to rescind the initial approvals that she had given with respect to several of the Partial Wind Up Reports, for failure to adhere to the doctrine of fairness, and for which she subsequently substituted Notices of Proposal to refuse approval;
2. whether the Tribunal could direct the Superintendent to refuse approval of certain of the Wind Up Reports on the basis of a ground that was not specifically recited in the relevant Notices of Proposal;
3. whether the Tribunal could determine the responsibility for any special benefits

payable to the former Westinghouse employees at the facilities that were closed by ABB Inc. as between CBS Canada Co. and ABB Inc.; and

4. whether the Tribunal could order that ABB Inc. be added as a party to the proceedings against its will.

At the hearing on the jurisdictional motion, the Tribunal refused to order that ABB Inc. be added as a party, but otherwise reserved its determination of the issues raised by the motion. Reasons for Decision on the jurisdictional motion dated March 4, 2002, were published in Volume 11, Issue 3 of the Pension Bulletin.

The Applicant filed a notice of appeal dated April 3, 2002, with the Divisional Court of the Tribunal's Order dated March 4, 2002.

A settlement conference was held on August 7-8, 2002. On October 4, 2002, a motion hearing was held with respect to the Applicant's notice of motion dated September 25, 2002, asking for an order that the CAW respond to the Applicant's interrogatories dated September 25, 2002. At the motion hearing the parties agreed that the motion could be dealt with by way of a consent order and such an order was subsequently issued.

The hearing is scheduled for December 2-5 and 10-12, 2002.

Samsonite Canada Inc.

Samsonite Canadian Service Related Pension Plan, Registration Number 398578, FST File Number P0166-2001 and FST File Number P175-2001;

On July 3, 2001, Samsonite Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated June 1, 2001, to refuse to consent to the application of Samsonite Canada Inc., dated November 13, 2000, for the payment of surplus to the Employer under subsection 78(1) of the *Pension Benefits Act* from the Samsonite Canadian Service Related Pension Plan, Registration No. 398578.

On November 2, 2001, Samsonite Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated October 11, 2001, to refuse to consent to the application of Samsonite Canada Inc. dated November 13, 2000, for the payment of surplus to the Employer under subsection 78(1) of the *Pension Benefits Act* from the Samsonite Canadian Retirement Income Plan, Registration No. 373225.

At the pre-hearing conference held on November 9, 2001, the parties requested that these two matters be joined and heard together. The matters were joined and the hearing was held on June 3, 2002. At the hearing, the Tribunal gave the parties 30 days to file any additional written submissions. Final written submissions were filed June 21 and July 2, 2002. In its decision, the Tribunal affirmed each of the Superintendent's Notice of Proposals and directed the Superintendent to dismiss the Company's applications for surplus withdrawal. The Reasons for Decision dated October 21, 2002, are published in this bulletin on page 126.

Imperial Oil Limited Retirement Plan, Registration Number 347054, FST File Number P0169-2001;

In this matter, the Superintendent alleges that, effective April 28, 1995, Imperial Oil Limited ("IOL") sold its credit card operations to General Electric Capital Canada Inc. ("GE Capital"), at which time 37 individuals, who had been employed by IOL in that business and were members of the IOL Retirement Plan, became employees of GE Capital and members

of its Pension Plan, while maintaining their accrued benefits in the IOL Retirement Plan.

On August 3, 2001, the Superintendent issued Notices of Proposal to make Orders requiring:

- that the IOL Retirement Plan be wound up in relation to those members and former members of the Plan who ceased to be employed by GE Capital, between March 2000 and July 2000, as a result of the closure of its Markham, Ontario credit card facility; and
- that such members and former members of the IOL Retirement Plan be given credit for both age and service at the time they ceased to be employed by GE Capital when determining their benefits, in accordance with section 80(1)(c) of the *Pension Benefits Act*, under the IOL Retirement Plan.

On August 24, 2001, IOL requested a hearing in respect of these Notices of Proposal.

A pre-hearing conference was held on January 9, 2002. The evidence phase of the hearing was held on June 13, 2002 and the submission phase was held on August 1, 2002. In its decision, the Tribunal made orders:

- directing the Superintendent to carry out the proposal to order the wind up of the IOL Retirement Plan; and
- directing the Superintendent to refrain from carrying out the remaining proposal as it relates to determining benefits under section 4.3 of the IOL Retirement Plan.

The Reasons for Decision dated October 21, 2002, are published in this bulletin on page 131.

Stanley Canada Inc., Pension Plan for Designated Employees of Stanley Canada Inc., Registration Number 456897, FST File Number P0170-2001;

On August 27, 2001, Stanley Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated July 26, 2001, to refuse to consent to the application for payment of surplus to the Employer dated April 1999, pursuant to section 78(1) of the *Pension Benefits Act*.

An Application for Party Status was filed on November 20, 2001, by Mr. Blaine Mitton, a Member of the Plan.

The pre-hearing conference scheduled for November 28, 2001, was rescheduled to January 10, 2002, at which time Mr. Mitton was granted party status. On January 11, 2002, an Application for Party Status was filed by Mr. Edward Holba, a Member of the Plan. The parties consented to Mr. Holba's Application for Party Status and full party status was granted by Order dated April 4, 2002. The May 2002 hearing dates were adjourned at the request of the parties for a motion to be brought by the Superintendent concerning expert evidence. The motion was heard on May 22, 2002. The hearing is scheduled for November 19, 2002.

Canadian Tack & Nail Ltd. Pension Plan for Salaried Employees, Registration Number 0581306, FST File Number P0171-2001;

On September 14, 2001, Canadian Tack & Nail Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated August 14, 2001, to make an Order under section 87 of the *Pension Benefits Act*, requiring the Employer or Administrator of the Plan to remit within 30 days of receiving the Notice of Proposal, outstanding contributions in the amount of $67,933 as of December 31, 1999, owed to the Pension Fund, together with interest payable under section 24 of Regulation 909 under the Act.

The basis for the Notice of Proposal is that subsection 87(2) of the Act allows the Superintendent to

make an order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the Act, the Regulations or the pension plan or if the employer, administrator of a pension plan, or any other person is contravening a requirement of the Act or the Regulations.

At a pre-hearing conference on February 7, 2002, the parties agreed to a settlement conference. At a settlement conference on June 27, 2002, the parties reached agreement and agreed to adjourn the hearing *sine die*. Any breach in the terms of the settlement gives the parties the right to ask that the pre-hearing conference be rescheduled.

The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475, FST File Number P0172-2001;

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal dated August 23, 2001, to refuse to consent to the application for payment of surplus to the employer, pursuant to section 78(1) of the *Pension Benefits Act*, from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475.

A pre-hearing conference was held on April 25, 2002, at which time the parties agreed to a settlement conference. The settlement conference date of July 16, 2002 was rescheduled at the parties' request and was held on September 4, 2002. The matter is adjourned *sine die*.

Pension Plan for Employees of Proctor & Redfern Limited, Registration Number 0289579, FST File Number P0173-2001;

On November 5, 2001, certain former employees of Proctor & Redfern Limited and members of the Plan, requested a hearing regarding the Superintendent's Notice of Proposal dated October 3, 2001, to refuse to make an Order under sections 69 and 87 of the *Pension Benefits Act*. The Superintendent proposed:

- to refuse to make an Order that the Plan be partially wound up with respect to former employees of Proctor & Redfern Limited whose employment was terminated between and including 1994 and 1998;
- to refuse to make an Order that the former employees whose employment was terminated between and including 1994 and 1998, as well as former employees who had their pension benefits annuitized in 1998 and 1999, be included in the surplus sharing group;
- to refuse to make an Order that those employees are entitled to share in the surplus distribution on an equitable basis, and;
- to refuse to make an Order that Earth Tech (Canada) Inc. refund to the Plan any funds improperly withdrawn from the Plan to fund its own legal and actuarial costs.

The principal grounds for the proposals in the Notice of Proposal were that the requested Orders relating to the composition of the partial wind up group would expand that group beyond those who were properly entitled to participation in the group and that there was no evidence that Earth Tech (Canada) Inc. had improperly withdrawn funds from the Plan.

On November 26, 2001, Earth Tech (Canada) Inc., the successor to Proctor & Redfern Limited, applied for party status on the basis that it is the current administrator of the Plan and has a duty to ensure that the Plan is properly wound-up.

On February 21, 2002, Mr. Guy Boudaud applied for party status. Mr. Boudaud was an employee of Proctor & Redfern Limited and contributed to the Plan.

The pre-hearing conference scheduled for May 1, 2002, was rescheduled to August 26, 2002 and was further adjourned on consent to October 17, 2002. On October 16, 2002, the applicants withdrew the request for hearing.

Retirement Pension Plan for Employees of Twin Oak Credit Union Ltd., Registration Number 284257, FST File Number P0178-2002;

On January 11, 2002, Twin Oak Credit Union Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated December 13, 2001, proposing to make an Order under section 87 of the *Pension Benefits Act*, with respect to Carol Joseph and any other part-time employee eligible for membership in the Plan. The Superintendent has proposed that the administrator of the Plan pay to Ms. Joseph her pension benefit determined on the basis that Ms. Joseph was eligible for membership and should have been enrolled in the Plan effective January 1, 1978. The Superintendent also proposed to order the administrator to provide, to any other part-time employee who was eligible to participate in the Plan, the monthly pension benefit determined on the basis that the part time employee was eligible for membership and should have been enrolled in the Plan effective January 1, 1978 or later if employed at a later date. The Superintendent also proposed that any lump sum owing to Ms. Joseph or any other eligible part-time employee representing retroactive payments shall also be credited with interest payable pursuant to subsection 21(11) of Regulation 909 made under the Act. Applications for Party Status were filed by Carol Lynne Joseph, Mary Lynn Feenan, Sharon Wiese, Donna Fredricks and Wendy Edmunds.

At the pre-hearing conference on April 24, 2002, full party status was granted to Ms. Joseph, Ms. Feenan, Ms. Wiese and Ms. Fredricks. Party status was not granted to Ms. Edmunds.

The parties agreed to a settlement conference which was held on June 4, 2002. The parties also agreed that a preliminary motion will be brought to decide whether or not the Tribunal has the jurisdiction to deal with the proposed issue of whether or not the employer is entitled to a credit for payments made in lieu of benefits to part-time employees under collective agreements during the period January 1, 1978 to January 1, 1988 and whether the *Limitations Act* bars this proceeding. The Motion scheduled for November 6, 2002, did not proceed at the request of the parties as settlement discussions are ongoing. The hearing is scheduled for February 24, 26-28, 2003 and March 26-28, 2003.

Marcel Brousseau, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0183-2002;

On February 20, 2002, Marcel Brousseau, a member of the Plan, requested a hearing regarding the Superintendent's Notice of Proposal dated January 22, 2002, to refuse to make an Order in respect of the Plan Administrator's determination pursuant to section 87 of the *Pension Benefits Act*, of Mr. Brousseau's pensionable service under the terms of the Plan.

A pre-hearing conference was held on August 27, 2002. At the pre-hearing conference, the Superintendent raised a jurisdictional issue. The parties agreed that the issue on the motion will be, "Given the November 19, 2001 decision of the Superior Court of Justice in Court File No. 01-CV-18268, does the Tribunal have jurisdiction to proceed in the circumstances of this case?". The motion is scheduled to be heard on November 29, 2002.

Molson Canada, Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666; Molson Canada Pension Plan for Hourly Employees in Ontario and Atlantic Canada, Registration Number 0334094; and Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086, FST File Number P0187-2002;

On June 7, 2002, Molson Canada requested a hearing regarding the five Notices of Proposal issued by the Superintendent each dated May 5, 2002, proposing to make Orders that the various Molson Canada Pension Plans be wound up in part.

The pre-hearing conference scheduled for October 28, 2002, was adjourned *sine die* on consent of the parties.

Donna Marie Sloan, Ontario Teachers' Pension Plan, Registration Number 0345785, FST File Number P0188-2002;

A survivor pre-retirement death benefit that was being paid to Donna Marie Sloan under the Plan was discontinued when the Ontario Pension Plan Board, the Administrator of the Plan, concluded that she was living separate and apart from her husband, the Plan member, at the time of his death, thereby disqualifying her from receiving the benefit. On March 4, 2002, the Superintendent issued a Notice of Proposal refusing to make an order, pursuant to section 87 of the *Pension Benefits Act*, requiring the Administrator to take action in respect of the Plan by reinstating the death benefit. On April 2, 2002, Donna Marie Sloan requested a hearing. On April 23, 2002, the Ontario Teachers' Pension Plan Board filed an Application for Party Status.

The pre-hearing conference scheduled for August 20, 2002 was adjourned *sine die* on consent, pending settlement discussions between the parties.

Bauer Nike Hockey Inc. Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337, FST File Number P0189-2002;

On April 3, 2002, Bauer Nike Hockey Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated March 8, 2002, to refuse to approve the actuarial report prepared on December 23, 1998, in respect of the partial wind up as at November 1, 1998, submitted by Bauer Nike Hockey Inc., to the Superintendent under sections 70(5) and 89(4) of the *Pension Benefits Act*, relating to the Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337.

At the pre-hearing conference on October 28, 2002, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.

Kerry (Canada) Inc., Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0191-2002;

On May 22, 2002, Kerry (Canada) Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated April 22, 2002, proposing to make an order that Kerry (Canada) Inc.:

- reimburse the pension fund (the "Fund") of the Plan for all amounts paid out of the Fund from January 1, 1985 for expenses that were not incurred for the exclusive benefit of the members and retired members of the Plan;
- reimburse the Fund for all income that would have been earned by the Fund if those expenses had not been paid from the Fund; and
- amend the Plan and the trust (the "Trust") in respect of the Fund so that the provisions of

the Plan and the Trust relating to the deduction of expenses from the Fund are consistent with the 1954 versions of the Plan and the Trust.

On June 10, 2002, an application for party status was filed by William Fitz on behalf of the DCA Employees Pension Committee.

At the pre-hearing conference on October 15, 2002, full party status was granted to the individuals comprising the DCA Employees Pension Committee, representing the members and retired members of the Plan. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. The motion hearing is scheduled for December 6, 2002.

DCA Employees Pension Committee and William Fitz, Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0192-2002;

On May 27, 2002, William Fitz on behalf of the DCA Employees Pension Committee, requested a hearing regarding the Superintendent's Notice of Proposal, dated April 22, 2002, proposing to refuse to make an Order that:

- the Plan be wound up, effective December 31, 1994;
- Kerry (Canada) Inc. pay to the pension fund (the "Fund") of the Plan all employer contributions for which a contribution holiday was taken since January 1, 1985, together with income that would have been earned by the Fund if those contributions had been made; and
- registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused.

On June 5, 2002, an application for party status was filed by Kerry (Canada) Inc.

At the pre-hearing conference on October 15, 2002, full party status was granted to Kerry (Canada) Inc. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. The motion hearing is scheduled for December 6, 2002.

Plumbers Local 463 Pension Plan, Registration Number 0598532, FST File Number P0190-2002;

On May 16, 2002, the Board of Trustees of the Plumbers Local 463 Pension Plan Trust Fund (the "Board of Trustees"), requested a hearing regarding an Order, dated April 11, 2002, of the Deputy Superintendent, Pensions, made under subsection 106(13) of the Pension Benefits Act. In his Order, the Deputy Superintendent ordered that the Board of Trustees pay the cost of an examination, investigation or inquiry in respect of the Plan and pension fund for the Plan; and the cost of any opinion, report or professional attestation prepared following the examination, investigation or inquiry.

At the pre-hearing conference on October 7, 2002, the parties requested a settlement conference. At the settlement conference on November 14, 2002, the parties settled the matter.

Robert Kerschbaumer (AFG Industries Ltd. Salaried Pension Plan, Registration Number 1070853), FST File Number P0197-2002;

On September 4, 2002, Robert Kerschbaumer, requested a hearing regarding the Deputy Superintendent, Pensions, Notice of Proposal dated August 2, 2002, to make an Order under subsection 78(1) of the *Pension Benefits Act*, consenting to a payment out of AFG Industries Ltd., Salaried Pension Plan, Registration Number 1070853.

The pre-hearing conference date is scheduled for February 10, 2003.

Alan Bishop

(Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration Number 1079920), FST File Number P0198-2002;

On October 23, 2002, Alan Bishop, requested a hearing regarding the Deputy Superintendent, Pensions, Amended Notice of Proposal dated September 27, 2002, to make an Order under subsection 78(1) of the *Pension Benefits Act*, consenting to a payment out of the Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration Number 1079920.

The pre-hearing conference date is pending.

Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338, FST File Number P0203-2002

On October 31, 2002, Slater Steel Inc., requested a hearing regarding the Deputy Superintendent, Pensions, Notice of Proposal dated September 27, 2002, to make an Order under section 69(1)(d) of the *Pension Benefits Act*, that the Plan be wound up in part in relation to those members and former members of the Plan who ceased to be employed by Slater Steel Inc. effective from March 13, 1998 to January 26, 2000 as a result of the reorganization of the business of Slater Steel.

The pre-hearing conference date is pending.

The following cases are Adjourned *sine die*

- **Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 321554 and the Pension Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 292946, FST File Number P0051-1999;** At a pre-hearing conference on July 6, 1999, the matter was adjourned *sine die*.
- **The Retirement Plan for Salaried Employees (Consumers Foods) of General Mills Canada, Inc., Registration Number 342042, FST File Number P0058-1999;** Matter continues to be adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Gerald Menard (Public Service Pension Plan, Registration Number 208777 and the Ontario Municipal Employees' Retirement System "OMERS", Registration Number 345983), FST File Number P0071-1999;** Matter adjourned *sine die* at a pre-hearing conference on February 21, 2000.
- **Consumers' Gas Ltd., Registration Number 242016, FST File Number P0076-1999;** At the pre-hearing conference on June 27, 2000, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Schering-Plough Healthcare Products Canada Inc. Salaried Employees' Pension Plan, Registration Number 297903, FST File Number P0085-1999;** Matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Eaton Yale Limited Pension Plan for Salaried Employees of Cutler-Hammer Canada Operations, Registration Number 440396, FST File Number P0117-2000;** At the request of the parties, this matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Cooper Industries (Canada) Inc., Registration Number 0240622, FST File Number P156-2001;** The pre-hearing conference for May 27, 2002 was adjourned to a date to be set at the request of the parties, pending the outcome of the *Monsanto* case.
- **Pension Plan for the Employees of Dyment Limited, Registration Number 0242735, FST File Number P0157-2001;** The April 15 and 16, 2002 hearing dates were adjourned at the parties' request so that settlement discussions may continue.
- **Crown Cork & Seal Canada Inc. Registration Numbers 474205, 595371 & 338491, FST File Number P0165-2001;** The parties agreed to adjourn this matter *sine die* pending discussions between the parties.
- **James MacKinnon (Labourers' Pension Fund of Central and Eastern Canada), Registration Number 573188, FST File Number P0167-2001;** On July 10, 2002, the hearing dates were adjourned *sine die* on consent of the parties.

Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

FST File Number	Superintendent of Financial Services' Notice of Proposal	Comments
U0193-2002	To Refuse to Consent, dated June 24, 2002	Reasons for Decision, dated August 29, 2002
U0194-2002	To Refuse to Consent, dated July 8, 2002	Reasons for Decision, dated August 29, 2002
U0196-2002	To Refuse to Consent, dated June 26, 2002	Withdrawn, September 26, 2002
U0200-2002	To Refuse to Consent, dated September 23, 2002	Written Submissions Being Exchanged
U0202-2002	To Refuse to Consent dated October 7, 2002	Written Submissions Being exchanged

Decisions to be Published

LECO

Imperial Oil (1)

Imperial Oil (2)

Independent Order of Foresters

Samsonite Canada Inc.

U0193-2002 Reasons

U0194-2002 Reasons

Financial Services Tribunal Decisions with Reasons

INDEX NO.:	FST File Number LECO
PLAN:	Revised Pension Plan of Leco Inc., Registration Number 272849
DATE OF DECISION:	June 17, 2002
PUBLISHED:	Bulletin 12/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 and *Regulation 909*, R.R.O. 1990;

AND IN THE MATTER OF an application by McColl-Frontenac Petroleum Inc. for an amended consent of the Pension Commission of Ontario to payment of an amended amount of surplus from the Revised Pension Plan of Leco Inc., Registration Number 272849 (the "Plan");

AND IN THE MATTER OF a Hearing held by the Pension Commission of Ontario;

BEFORE:

C.S. (Kit) Moore
Chair

Don Collins
Member

Judith Robinson
Member

Joyce Stephenson
Member

David Wires
Member

HEARING DATE:
May 31, 2002

HELD AT:
Toronto, Ontario

THE DECISION, BACKGROUND AND REASONS

THE DECISION

At its meeting of May 31, 2002, the Pension Commission of Ontario (the "PCO") considered an application by McColl-Frontenac Petroleum Inc. (the "Company") for an amended consent pursuant to subsection 78(1) of the *Pension Benefits Act*, R.S.O. 1990 c.P.8 (the "Act") and section 8(2) of *Regulation 909*, R.R.O. 1990, as amended (the "Regulation"), to a payment of surplus to the Company. The payment requested represents the surplus assets attributable to the Ontario portion of the Plan, based on a statement prepared by the Company's actuary.

On May 31, 2002, the PCO consented, pursuant to subsection 78(1) of the Act and subsection 8(2) of the Regulation, to a payment of surplus to the Company, in the amended amount of $637,581.54 as at December 31, 2000, plus investment earnings thereon to the date of payment.

The background and reasons for this decision are set out below.

BACKGROUND

At an earlier meeting held June 26, 1997, the PCO had approved the Company's original application for payment of 100% of the Plan's surplus assets, in accordance with the procedural framework in the *Ontario Act* and pursuant to its powers as the "major authority" under the terms of the Memorandum of Reciprocal Agreement entered into in 1968 by the PCO,

the Régie des rentes du Québec (the "Régie") and other provincial pension authorities (the "Reciprocal Agreement").

The Plan included members with employment in Ontario and Québec, but the majority of active members reported to work in Ontario. Therefore, under the terms of the Reciprocal Agreement, the Plan was registered solely with the PCO which, as the major authority under the terms of the Reciprocal Agreement, had authority to make all decisions in relation to the Plan.

The Régie brought an application in the Superior Court of Justice Divisional Court (the "Court") for judicial review of the PCO decision. In August of 2000, the Court quashed the PCO's decision insofar as it affected Québec members, remitted the matter to the PCO for reconsideration, and directed the PCO to provide written reasons for any further decision.

On or about November 26, 1997, the Régie exempted itself from the operation of the Reciprocal Agreement in relation to the Plan. As a result, the PCO no longer has authority to make decisions about the Plan's surplus relating to Québec members, as the source of that authority was the Reciprocal Agreement.

In December of 2000, the PCO directed the Company to prepare a new report and amended application to the PCO. The Company's actuary prepared and submitted an actuarial statement identifying the liabilities and surplus assets relating to the Québec members, for use in the PCO's reconsideration of this matter.

REASONS

The Court's quashing of the PCO's decision of June 26, 1997, and the Court's direction to the PCO, was only insofar as the decision affected Québec Plan members. We have not revisited that decision as it related to Ontario Plan members, nor did we require further notice to be served on those members, as they had been given notice of the Company's original application for refund of surplus assets. Also, as the Régie has exempted itself from the operation of the Reciprocal Agreement with respect to the Plan, we no longer have authority to make decisions regarding the Québec portion of the Plan. As a result, in reconsidering this matter, we directed our attention to the split of surplus assets between the Québec and Ontario portions of the Plan.

The Company's actuary provided a letter dated March 16, 2001, which included the following statement:

> Proportionately 64.74% of the value of the benefit entitlements are attributable to Quebec members or beneficiaries. This letter can be used as the basis for

apportioning the final Plan surplus to the Plan liabilities of Quebec members and beneficiaries.

The Régie subsequently notified the Company, in a letter dated August 3, 2001, that the Régie would agree to supervise the windup process for Québec members in accordance with the contents of that letter. In a letter dated September 5, 2001, to the PCO, the Régie indicated they were satisfied with the proposed attribution, as set out in the actuary's March 16th letter. We are satisfied with this proposal for apportioning the Plan surplus, which will result in an attribution of 35.26% of Plan surplus, or $637,581.54 as at December 31, 2000, to the Ontario portion of the Plan.

In making our decision, we noted that the interested parties or their representatives have been informed that this hearing would be held, and have been sent a copy of the PCO staff report dated April 8, 2002, prepared by Ms. Lynda Ellis. We are not aware of any objections raised to the Company's application for our amended consent.

In addition, all pension benefits for Ontario members, former members and other beneficiaries of the Plan have been paid. The application satisfies all other appropriate requirements of the Act and Regulation and the PCO's published policies in respect of such applications.

For these reasons, we give our amended consent to a payment of surplus to McColl-Frontenac Petroleum Inc., in the amended amount of $637,581.54 as at December 31, 2000, plus investment earnings thereon to the date of payment.

DATED at Toronto this 17th day of June, 2002.

C.S. (Kit) Moore
Chair

Judith Robinson
Member

Don Collins
Member

David Wires
Member

Joyce Stephenson
Member

INDEX NO.: FST File Number U0193-2002

DATE OF DECISION: August 29, 2002

PUBLISHED: Bulletin 12/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated June 24, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated June 24, 2002, that denied the Applicant access to funds associated with his Life Income Fund (the "locked-in account"). The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

   67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that the low income circumstance of financial hardship prescribed by s. 87(1)7 of Regulation 909, R.R.O. 1990, as amended (the "Regulation") is not satisfied. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the application.

3. This application included information provided by the Applicant in Part 2A — Withdrawal Based on Low Income. An application submitted on this basis is subject to the circumstances of financial hardship set out in paragraph 7 of subsection 87(1) of the Regulation as follows:

   87.-(1) The following circumstances of financial hardship are prescribed for the purposes of subsection 67(5) of the Act:

   7. The owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application is 66 ⅔ per cent or less of the Year's Maximum Pensionable Earnings ["YMPE"] for the year in which the application is signed.

4. This application was signed in the year 2002, for which the Canada Pension Plan's YMPE was $39,100, in which case 66 ⅔ per cent of the YMPE would be $26,066.67. The Applicant has stated that his expected total income from all sources before taxes for the

12-month period following the date of signing the application is $30,365.00, which exceeds $26,066.67. In this case, the low income circumstances of paragraph 87(1)7 of the Regulation are not satisfied, with the result that the application does not meet the requirements of subsection 67(5) of the Act.

5. The Applicant has requested that an exception be made in this case, given the circumstances of his indebtedness and the amount of funds in his locked-in account. As noted in the Superintendent's submission, this Tribunal does not have authority to direct the Superintendent to allow an application for withdrawal from a locked-in account that does not meet the requirements of the Regulation. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated June 24, 2002, in respect of this application.

ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated June 24, 2002, is affirmed and this application is dismissed.

DATED at Toronto, this 29th day of August, 2002.

Mr. C.S. Moore
Member, Financial Services Tribunal

INDEX NO.: FST File Number U0194-2002

DATE OF DECISION: August 29, 2002

PUBLISHED: Bulletin 12/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated July 8, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent, dated July 8, 2002, that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

   67.–(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "Current Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application (the "Previous Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

   89.–(4) Only one application may be made during each 12-month period.

   (5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the Current Application.

4. The Previous Application was signed by the Applicant on December 18, 2001. On January 2, 2002, the Superintendent consented to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the Previous Application was a successful application.

5. On June 12, 2002, the Applicant signed the Current Application, in which she applied to withdraw additional funds from her locked-in account on the basis of low income. As this application was made within 12 months after the successful Previous

Application, which was made on the basis of low income, the Current Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. Although the Applicant's written submission provides compelling evidence of her financial hardship, this Tribunal does not have the authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. Once 12 months have passed since the date of the successful Previous Application, a further application for withdrawal of locked-in funds may be submitted for consideration by the Superintendent, if the circumstances of the Applicant are such that she wishes to do so.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated July 8, 2002, in respect of the Current Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated July 8, 2002, directed to the Applicant.

DATED at Toronto, this 29th day of August, 2002.

Mr. C. S. Moore
Member, Financial Services Tribunal

INDEX NO.:	FST File Number P0130-2000
PLAN:	Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 (the "IOL Plan") and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac, Registration Number 344002 (the "MFI Plan")
DATE OF DECISION:	September 11, 2002
PUBLISHED:	Bulletin 12/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF partial wind up reports submitted by Imperial Oil Limited to the Superintendent of Financial Services respecting the Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 (the "IOL Plan") and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac, Registration Number 344002 (the "MFI Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:

IMPERIAL OIL LIMITED
Applicant
-and-
SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

BEFORE:

Mr. Colin H.H. McNairn
Vice Chair of the Tribunal and Chair of the Panel

Mr. Louis Erlichman
Member of the Tribunal and of the Panel

Mr. William M. Forbes
Member of the Tribunal and of the Panel

APPEARANCES:

For Imperial Oil Limited:
Ms. Lindsay P. Hill

For the Superintendent of Financial Services:
Ms. Deborah McPhail

HEARING DATE:
July 24, 2002

REASONS FOR ORDER

The Background

This proceeding was initiated by the Applicant, Imperial Oil Limited, by filing a Notice of Request for Hearing with the Tribunal. The Request calls into question a Notice of Proposal by the Superintendent of Financial Services (the "Superintendent"), dated October 3, 2000, to refuse to approve partial wind up reports filed by the Applicant in connection with the partial wind up of two of its pension plans, namely its IOL Plan and its MFI Plan (the "Plans"). Those wind ups had been ordered by the Superintendent because of the reorganization of the Applicant and the

closure of one its refineries. The Plans were to be wound up in relation to those members and former members of the Plans who ceased to be employed by the Applicant, as a result of these actions, during the period beginning February 4, 1992 and ending on the later of June 30, 1995 and the date the last member employed at the refinery ceased employment (the "Partial Wind Up Period"). We refer to this group of members and former members as the "Partial Wind Up Group".

The stated grounds for the Notice of Proposal include the following:

- the reports do not reflect the liabilities associated with all of the members of the Plans whose employment with the Applicant was terminated during the Partial Wind Up Period; and
- the reports fail to provide "grow-in benefits," pursuant to section 74 of the Act, in respect of all members of the Plans affected by the partial wind ups who earned benefits while working in Ontario and whose combination of age and years of service with the Applicant is at least 55.

By a notice of motion dated June 29, 2001, the Applicant moved for an order of the Tribunal directing the Superintendent to answer certain interrogatories that it had posed and to produce the documents requested with those interrogatories (the "Initial Motion"). That motion was heard on July 25, 2001. The Tribunal disposed of the Initial Motion by order, dated September 10, 2001, directing the Superintendent to respond to the interrogatories and requests for production within six weeks of the order, subject only to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies. That order was supported by written reasons of the Tribunal (see the Pension Bulletin, vol. 11, issue 1 (Jan., 2002), at pp. 155-160).

Following the order, the Superintendent provided responses to the interrogatories and requests for production by letters to counsel for the Applicant dated October 23, 2001 and November 15, 2001, but the Applicant has taken the position that the responses are deficient. Accordingly, by further notice of motion, dated June 7, 2002, the Applicant moved for an order of the Tribunal directing the Superintendent to provide further and better answers to certain of its interrogatories and to produce the documents referred to therein (the "Current Motion").

The Issues in the Proceeding

For the purposes of both the Initial Motion and the Current Motion, the parties agreed that the issues in this proceeding that are relevant to the motions should be framed and grouped as follows:

Issue 1

(a) Did any members or former members of the Plans who ceased to be employed by the Applicant during the Partial Wind Up Period as set out in the Notice of Proposal cease to be employed as a result of the reorganization or discontinuance of all or part of the Applicant's business, if their circumstances fell within one of the following:

(i.) employees whose fixed term contract of employment was complete by its terms (e.g. summer students, co-op students, and employees hired on a contract basis for a specified period of time);

(ii.) employees who became disabled and received disability benefits;

(iii.) employees who allegedly voluntarily resigned;

(iv.) employees who were transferred to an affiliated company that did not participate in the Plans;

(v.) employees who retired under the terms of the Plans at normal retirement age;

(vi.) employees who retired under the disability retirement provisions of the Plans;

(vii.) employees whose employment was terminated as a result of death; and

(viii.) employees whose employment was allegedly terminated for cause.

(b) Do the doctrines of legitimate expectation, abuse or improper exercise of discretion or estoppel apply in the circumstances of this case with respect to the issue of which members or former members must be included in the Partial Wind Up Group?

Issue 2

(a) Does the Act require the "grow-in benefits" under section 74 be granted to members and former members of the Partial Wind Up Group who were employed in a province other than Ontario or Nova Scotia on the date that their employment ceased, in relation to any prior periods of employment with the Applicant in Ontario or Nova Scotia? If so, on what basis should such benefits be calculated?

(b) If the answer to issue (a.) is "yes", can periods of employment in provinces other than Ontario or Nova Scotia be excluded when calculating the "grow-in benefits" under section 74 of the Act and section 79 of the *Pension Benefits Act* (Nova Scotia) payable to all members and former members whose employment ceased in Ontario or Nova Scotia?

(c) If the answer to issue (a.) is "yes", do the doctrines of legitimate expectation, abuse or improper use of discretion or estoppel apply in the circumstances of this case with respect to the calculation of "grow-in benefits" under section 74 of the Act and section 79 of the *Pension Benefits Act* (Nova Scotia) for members who ceased to be employees in the circumstances set out in issue (a.)?

There is a third issue that will have to be addressed at the main hearing in this proceeding, but none of the interrogatories or requests for production relate to that issue.

The Interrogatories and Requests for Production

Re: Issue 1

The first set of interrogatories and requests for production to which the Applicant continues to insist on responses or more complete responses can be summarized as follows:

- how many partial plan wind ups were ordered by the Superintendent during the period January, 1988 to October, 2000 (the "sample period") pursuant to,
  - paragraph 69(1)(d) of the Act (significant number of members of a plan ceasing to be employed as a result of discontinuance or reorganization of business),
  - paragraph 69(1)(e) of the Act (discontinuance of a significant portion of the business at a specific location)?
- how many situations were there in respect of such wind ups (ordered under each of the noted paragraphs of the Act) where employees were terminated during the Partial Wind Up Period for the following reasons:

- the expiry of a fixed term contract of employment;
- disability;
- voluntary resignation;
- transfer to an affiliated company that did not participate in the Plans;
- retirement at normal retirement age under the terms of the Plans;
- death; and
- cause for dismissal?

- how many wind up reports (in respect of wind ups ordered under each of the noted paragraphs of the Act) included employees in any such category in the partial wind up group?
- did the Superintendent refuse to approve any partial wind up reports (in respect of wind ups ordered under each of the noted paragraphs of the Act) because the employees in any such category were not included in the relevant partial wind up group?

Re: Issue 2

The second set of interrogatories and requests for production to which the Applicant continues to insist on responses or more complete responses can be summarized as follows:

- how many of the partial wind up reports filed with the Superintendent during the sample period provided, and how many did not provide, for "grow-in benefits" for employees who were employed in Ontario or Nova Scotia at some time but were employed elsewhere at the time their employment ceased and how many of the reports providing, and of the reports failing to provide, such benefits were approved and how many refused approval (giving the name and date of the plans in respect of which there was a refusal) and how many eliminated non-Ontario and non-Nova Scotia service from their calculation of "grow-in benefits"?
- how many of the partial wind up reports, filed with the Superintendent during the sample period, included in the partial wind up group employees who were employed in Ontario or Nova Scotia when their employment ceased but were employed elsewhere during some period of their employment, how many of these reports did not provide for "grow-in benefits" to such employees in respect of their non-Ontario and non-Nova Scotia service, and how many of these reports were approved and how many refused approval (giving the name and date of the plans in respect of which there was a refusal)?
- provide copies of all memoranda, meeting notes and other documents prepared by the Superintendent and her staff and any prior practices regarding the provision of "grow-in benefits" to employees in the circumstances described in the first paragraph, including the reduction of benefits for non-Ontario and non-Nova Scotia service, and with respect to the reduction of "grow-in benefits" to employees in the circumstances described in the second paragraph.

The Purpose

On the Initial Motion, the Applicant maintained that the responses to the interrogatories and the requests for production were relevant to the present case in the determination, particularly, of issues 1(b) and 2(c) referred to above. Among other things, they might reveal whether there was a practice on the part of the Superintendent,

- to permit the exclusion of any of the categories of plan members described in issue 1(a) from partial wind up groups.

- to treat final employment by a plan sponsor in Ontario or Nova Scotia, rather than employment by that plan sponsor at some time in Ontario or Nova Scotia, as the criterion for inclusion in partial wind up groups, or
- to reduce "grow-in benefits" on account of service outside Ontario or Nova Scotia.

The sample period of January, 1988 to October, 2000, to which a number of the interrogatories relate, was apparently chosen by the Applicant on the basis that "grow-in benefits" on a wind up were first added to the Act at the beginning of the period and the Notice of Proposal in this matter was issued at the end of the period.

Analysis

The Superintendent filed an affidavit of Ms. Lynda Ellis, Manager, Technical Consulting of the Pension Plans Branch of the Financial Services Commission of Ontario, in response to the Current Motion, on which she was subject to cross-examination by the Applicant. In her affidavit, Ms. Ellis attests to the fact that, following the Tribunal's decision on the Initial Motion, she went through the records of the Pension Plans Branch to determine how many partial wind ups were processed during the sample period and the state of the records with respect to those partial wind ups. As a result of that exercise, she determined that the records (which are partly paper and partly electronic) do not differentiate between partial wind ups that were ordered by the Superintendent and those that were not and do not disclose the paragraph of the Act that may have provided the basis for wind ups ordered by the Superintendent. She estimated that there were 1047 partial wind up cases, including both voluntary and directed wind ups, that were processed during the sample period. On cross-examination, Ms. Ellis said that the electronic database of the Pension Plans Branch only reached back to the end of 1992 so that the figure of 1047 partial wind up cases included a "best guess" for that part of the sample period that preceded the electronic database.

To break down the partial wind up cases in order to determine those that are relevant to the interrogatories and to uncover any evidence of the Superintendent's practices that the Applicant was after, it appears that all of the estimated 1047 files would have to be examined. Given the size of the files, ranging between a minimum of 75 pages and a maximum of several bankers' boxes, Ms. Ellis estimated that it would take an experienced and trained employee of the Pension Plans Branch approximately 13 weeks (523 hours) to 26 weeks (1047 hours) of work to go through the files. She also noted that approximately 40% of the files were stored offsite in various locations and that, for this and other reasons, it would take about three weeks to assemble the files for review.

Of course, the Superintendent should have obtained all of the information that is now disclosed by Ms. Ellis' affidavit before the hearing on the Initial Motion and put it into evidence on that occasion. That was not done and the only excuse that was offered at the hearing on the Current Motion was that the Superintendent was confident that the Initial Motion would not be successful. Had the information in the affidavit been available on the hearing of the Initial Motion, we might have been persuaded to limit the number of files to be reviewed for the purpose of answering the interrogatories and even if we had not imposed such a limit, the interrogatories could have been answered by now on the basis of a full review of the files on Ms. Ellis' estimate of the time that would be involved in that review.

As we indicated in our reasons for decision on the Initial Motion, a threefold test is to be applied in determining whether answers to interrogatories and the disclosure of documents should be ordered, in particular:

- is the information sought arguably relevant to an issue in the proceeding that is not a frivolous issue,
- is the information sufficiently particularized to facilitate a response, and
- is the information of a kind that does not enjoy the benefit of privilege?

As this Tribunal said in its reasons for orders made in response to a motion to require the disclosure of documents and responses to interrogatories in *Monsanto Canada Inc. v. Superintendent of Financial Services* (see Pension Bulletin, vol. 8, issue 2 (Sept. 1999), at p. 79), the Tribunal "should, generally, be prepared to make a disclosure order against a party to a proceeding before it, requiring the production of documents or answers to interrogatories" if the above noted test is satisfied (emphasis added).

On the Current Motion, the Superintendent maintained that there had been substantial disclosure, particularly in response to the Applicant's second set of interrogatories (relating to issue 2), and that further disclosure was unnecessary to assist the Applicant in its expected arguments at the main hearing in this proceeding, that the information still being sought was irrelevant, and that any limited value of such information was outweighed by the onerous nature of the requests. The Applicant maintained that the Superintendent was, in effect, attempting to re-argue the Initial Motion which, it said, should not be permitted at this stage.

We do not think that substantial compliance with an order to respond to interrogatories or to produce documents is sufficient and we are not prepared to re-open the question of the relevance of the information that is being sought by the Applicant. In our reasons on the Initial Motion, we concluded that the information sought by the Applicant, through the interrogatories and requests for production, was arguably relevant. However, we are prepared to consider, albeit it at this late stage of the process, the hardship involved in obtaining the information sought by the Applicant when set against the potential value of the information to the Applicant for the purpose for which it may be used in this proceeding. While that hardship was considered on the Initial Motion, it was on the basis of a general allegation of hardship, without the benefit of any precise evidence of that hardship, which has now been brought forward through Ms. Ellis' affidavit.

We note that disclosure need not be "all or nothing" and should there be particular hardship in producing all the information that is arguably relevant, a practical solution may be to narrow the scope of the disclosure order (as in *First Choice Capital Fund Ltd. v. First Canadian Capital Corp.*, [2000] S.J. No. 574, at p. 5 (Sask. Q.B.)).

Having regard to the detailed evidence that we have now received, through Ms. Ellis' affidavit, as to what would likely be involved in responding to the interrogatories about partial wind ups during the sample period, we think that the Superintendent should be entitled to respond on the basis of a review of one-half of the files on partial wind up cases that were processed during the period from January 1, 1993, the approximate date from which the electronic database was implemented, to October, 2000. The files to be reviewed should be selected on an arbitrary basis — in essence, every second file in the chronological, alphabetical or other neutral order in which the files are recorded on

the database so that the files reviewed will be a representative sample. If there is any dispute between the parties as to the appropriate method of selecting the files for review, the matter may be spoken to before the chair of the panel that has heard the Current Motion. We believe that this modified direction will provide information about the practices of the Superintendent with a sufficient degree of precision to enable the Applicant to use the information, depending on what it reveals, for the intended purpose.

Given the delays in this proceeding that have already occurred as a result of disputes by the Superintendent over the interrogatories and productions that are the subject of the Current Motion, we believe that the time for response to any new order that we make on this Motion should not extend beyond six weeks, which was the time for response to our order on the Initial Motion, even though this may impose some hardship on the Superintendent by requiring the diversion of considerable resources to providing a response in a timely manner.

We have yet to consider the third outstanding interrogatory with respect to Issue 2 — more accurately a request for production of documents, specifically memoranda, meeting notes and other documents relating to the Superintendent's position on the provision of "grow-in benefits" to employees who worked in Ontario or Nova Scotia at some time and outside those provinces at another time. The Superintendent has provided some material to the Applicant in response to this request, as enclosures with letters to counsel for the Applicant dated April 18, 2001 and October 23, 2001. In the second of these letters, the Superintendent's counsel has expressed a willingness to provide additional material in response to this request that consists of documentation indicating the approach taken by the Superintendent on two particular partial wind up cases, provided that the confidentiality of this material is maintained. We think that a reasonable assurance of confidentiality can be secured through an undertaking of confidentiality by the Applicant. Failing agreement on the terms of such an undertaking, the chair of this panel is prepared to entertain a motion for an order of confidentiality that is brought forward by either of the parties. Subject to the disclosure of this additional material, the Superintendent appears to have responded to our order on the Initial Motion as it relates to the disclosure of memoranda, meeting notes and other documents. However, the Applicant is entitled to persist in its request for the disclosure of this material so that the Superintendent continues the search for any additional material of this nature with a view to its disclosure before the deadline for responding to interrogatories and making productions that we impose in our order on the Current Motion.

Finally, the Applicant requested an order for the recovery of its costs on the Current Motion. We will deal with that request at the conclusion of the main hearing in this proceeding.

Disposition

We order the Superintendent to respond to the interrogatories and requests for production to which the Applicant continues to insist on responses, as more particularly set out in Appendix "A" to the Applicant's notice of motion, within six weeks of the date of this order, subject only to the qualifications that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies and that the responses to the interrogatories may be based on a review of one half of the files on partial

wind ups that were processed during the period January 1993 to October 2000.

DATED at Toronto, Ontario, this 11th day of September, 2002.

Colin H.H. McNairn,
Vice Chair of the Tribunal and Chair of the Panel

Louis Erlichman,
Member of the Tribunal and of the Panel

William M. Forbes,
Member of the Tribunal and of the Panel

INDEX NO.:	FST File Number P0155-2001
PLAN:	The Independent Order of Foresters Fieldworkers' Pension Plan, Registration No. 0354399 (the "Plan")
DATE OF DECISION:	September 16, 2002
PUBLISHED:	Bulletin 12/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a proposal by the Superintendent of Financial Services (the "Superintendent"), pursuant to the Act, to refuse to consent to the payment of surplus out of The Independent Order of Foresters Fieldworkers' Pension Plan, Registration No. 0354399 (the "Plan");

AND IN THE MATTER OF a proposal by the Superintendent, pursuant to the Act, to refuse to approve a wind up report in respect of the Pension Plan;

AND IN THE MATTER OF a hearing in accordance with subsection 89(8) of the Act;

BETWEEN:

THE INDEPENDENT ORDER OF FORESTERS
Applicant
-and-
SUPERINTENDENT OF FINANCIAL SERVICES and
IRVIN GRAINGER
Respondents

BEFORE:

Mr. Colin H.H. McNairn
Vice Chair of the Tribunal and Chair of the Panel

Mr. Louis Erlichman
Member of the Tribunal and of the Panel

Ms. Heather Gavin
Member of the Tribunal and of the Panel

APPEARANCES:

For The Independent Order of Foresters:
Ms. Lisa J. Mills
Ms. Elizabeth Brown

For the Superintendent of Financial Services:
Mr. Mark Bailey
Ms. Deborah McPhail

HEARING DATE:
June 18, 2002

REASONS FOR DECISION OF MR. MCNAIRN

Background

This proceeding was commenced as a result of a request for hearing filed on April 12, 2001 by The Independent Order of Foresters (the "IOF") challenging a notice of proposal of the Superintendent of Financial Services (the "Superintendent ") dated March 19, 2001 (the "Notice of Proposal"). In that Notice, the Superintendent proposes to refuse consent to an application by the IOF for the payment of surplus from the Independent Order of Foresters Fieldworkers' Pension Plan (the "Plan"), on its wind up effective December 31, 1997, and to refuse approval of the wind up report in respect

of the Plan filed by the IOF. The stated basis for the proposed refusals is two-fold:

- the IOF had not demonstrated that the assets in the pension fund, representing the excess over and above the basic benefit entitlements of members and former members of the Plan and the anticipated expenses of wind up, constituted surplus for the purposes of the *Pension Benefits Act*, as amended (the "Act"), and
- the assets held in the pension fund, including those excess assets, were subject to a trust for the benefit of the members, in which case the Plan could not be said to provide for the payment of surplus to the IOF.

The excess assets were estimated to have a value of $1,433,760 as at December 31, 1999.

The IOF's application for the payment of surplus was made to the Superintendent on the basis that at least two-thirds of the Plan members had consented to a surplus distribution proposal under which the IOF would share in the surplus on a 50-50 basis with the members and former members of the Plan. Subsection 79(3) of the Act requires, among other things, that before an application for the payment of surplus on the wind up of a pension plan can be approved, the Superintendent must be satisfied that the pension plan has a surplus and the pension plan must provide for the payment of surplus to the employer on wind up.

The issue that was the subject of the hearing before the Tribunal is whether the Plan provides for the payment of surplus to the IOF. The Tribunal was invited by the parties to determine this issue on the assumption that the excess assets in the pension fund for the Plan represent surplus. The determination of whether the latter assumption is correct was left for a subsequent hearing as necessary.

Analysis

1. The Nature of the Pension Fund at the Inception of the Plan in 1953

In his written representations, Mr. Grainger, a former member of the Plan who was granted party status in this proceeding, submitted that the amounts contributed by the IOF and the Plan members from time to time, pursuant to the Plan, and the income generated from those contributions (together comprising the "Pension Fund") constituted trust funds for the benefit of the members, who were, therefore, entitled to any surplus. This submission was based on a provision of the Plan to the effect that the Pension Fund was to be used only for the purpose of the payment of the benefits provided under the Plan. This exclusive benefit provision is found in subsection 7(2) of the original Plan and was carried forward in subsequent versions of the Plan. However, the Plan does not say specifically that the Pension Fund is to be held in trust nor does it make reference to a trustee in respect of that Fund. Indeed, the evidence in this case was that until 1995 the assets comprising the Pension Fund, although accounted for separately, were held as part of the assets of the IOF, in accordance with the Constitution and Laws of the IOF. One of the elements essential to the creation of a valid trust is an intention to create a trust. There was no evident intention, on the part of the IOF, to create a trust in respect of the Pension Fund upon the establishment of the Plan. An exclusive benefit provision similar to that contained in the Plan has been held to be insufficient, of itself, to establish such an intention; see *Schmidt v. Air Products Canada Ltd.*, [1994] 2 S.C.R. 611, at p. 666, and *Howitt v. Howden Group Canada Ltd.* (1999), 179 D.L.R. (4th) 423, at pp. 429-430 (Ont. C.A.).

I have concluded, therefore, that the Pension Fund was not subject to a trust at the inception of the Plan. Moreover, there were no changes to the Plan or to the funding of the Plan before 1995 that were alleged, by any of the parties, to have the effect of imposing a trust on the Pension Fund.

2. Entitlement to Surplus under the Original Plan

Section 9 of the original Plan provided as follows:

> In the event of the discontinuance of the [P]lan, the [Pension] Fund shall immediately vest in the members and shall be distributed or otherwise dealt with for their benefit in such equitable manner as the Supreme Court [of the IOF] may with the advice of the actuary by resolution decide.

This provision remained in place without change until 1990, when the Plan was amended with effect from January 1, 1988. The validity of that amendment, as it purports to affect the above noted provision, is considered below (see section 3).

The authority of the Supreme Court of the IOF to decide, on the advice of the actuary, upon an equitable manner by which the distribution or other disposition of the Pension Fund should occur cannot reasonably be construed as giving the Supreme Court the power to direct any surplus in the Pension Fund to be applied for the benefit of the IOF. Rather, the Supreme Court's authority should logically be interpreted as simply allowing it to adopt a plan for the distribution or other disposition of the Pension Fund that provides in an equitable way for the determination of the extent of participation of the various members.

I have concluded that the Plan did not provide for the payment of surplus to the IOF and that this remained the position at the time of the amendment to the Plan that was adopted in 1990.

3. The Validity of the Plan Amendment Providing for the Payment of Surplus to the IOF

The Plan was amended in 1990 with effect from January 1, 1988 (the "1988 Plan Amendment") to provide, among other things, for the payment of any surplus in the Pension Fund to the IOF. I refer to this particular provision of the 1988 Plan Amendment as the "1988 Surplus Amendment". The Superintendent challenged the 1988 Surplus Amendment as unauthorized, and therefore without effect, on two grounds.

First, the Superintendent maintained that the Plan was part of the Constitution and Laws of the IOF and, as such, could only be amended by the Supreme Court (now called the International Assembly) of the IOF. The 1988 Plan Amendment was apparently adopted by the Executive Council (now called the Board of Directors) of the IOF pursuant to a general delegation of authority by the Supreme Court to the Executive Council. Although there was some confusion in the evidence on this point, I have concluded that the Plan was not part of the Constitution and Laws of the IOF, although the Pension Fund was referred to therein as one of the IOF's funds. Accordingly, the Executive Council had the authority to amend the Plan under the general delegation of authority from the Supreme Court.

Second, the Superintendent maintained that there was no authority under the terms of the Plan to make amendments and the IOF could not, therefore, effect the 1988 Surplus Amendment unilaterally given that the Plan constituted a contract between IOF, as an employer, and its employees. In *Crownx Inc. v. Edwards* (1994), 120 D.L.R. (4th) 270, the Ontario Court of Appeal described the right to amend a pension plan as follows:

> Whether one applies the law of trusts or the law of contract to pension plans, the right to later unilaterally amend the pension plan to provide for payment of surplus monies on termination must be found in the provisions of the original plan. It is trite to say that if the plan constitutes a contract between the employer and employees, the right of one party to make significant amendments to the contract at a later stage must be found expressly or by implication in the original contract. (At pp 280-281.)

In the present case, it is appropriate to apply contract principles in determining the authority of the IOF to make the 1988 Surplus Amendment since, as the Supreme Court of Canada stated in the *Schmidt* decision:

> [I]f the pension fund, or any part of it is not subject to a trust, then any issues relating to outstanding pension benefits or to surplus entitlement must be resolved by applying the principles which pertain to the interpretation of contracts to the pension plan. (At p. 655.)

In *Schmidt*, the Supreme Court examined the amending power in a pension plan the fund of which was not subject to a trust (the Stearns plan) to determine whether an amendment to the plan providing for a reversion of surplus to the employer was valid (see [1994] 2 S.C.R. 611, at pp. 671-674). In that case, the amendment was found to fit within the express amending power and, therefore, to be effective.

In the present case, there was no amending power set out expressly in the Plan prior to 1990, when the 1988 Plan Amendment was adopted, nor can I find any basis for implying any such power that would be broad enough to authorize an amendment in the terms of the 1988 Surplus Amendment. This is not to say that the power to make some other kinds of amendments to the Plan — say, to comply with income tax or pension legislation, to enhance benefits or to implement a collective agreement with a labour union — could not be implied or that the consent of the employees to some or all of those kinds of amendment could not be inferred. Given the effect on their entitlement to surplus on termination, the employees who were members of the Plan cannot, in my view, be presumed to have consented to the 1988 Surplus Amendment.

While the original Plan contemplates the discontinuance of the Plan (subsection 10(5)), that does not carry an implication that the IOF may also amend the Plan so as to reserve any surplus to itself. Indeed, as noted above, any discontinuance of the Plan was to be on the basis that the Pension Fund should immediately vest in the members and be distributed or otherwise dealt with for their benefit. If, as I have concluded, the 1988 Surplus Amendment was not within the scope of an amending power implicit in the Plan, that amendment is without effect and the treatment of surplus on the discontinuance of the Plan must be in accordance with the pre-Amendment provisions of the Plan. In particular, the surplus must be distributed or otherwise dealt with, as part of the Pension Fund, for the benefit of the members upon the wind up of the Plan that has now occurred.

I assume that the 1988 Plan Amendment was accepted for registration by the Superintendent, pursuant to the terms of the Act, although there was no evidence before us on this point. Such registration does not mean that the Amendment must, therefore, be treated as valid in its entirety. There is nothing in the Act, or the regulations under the Act to the effect that registration of an amendment cures any invalidity (see sections 12-17 of the Act and section 3 of Regulation 909, R.R.O. 1990, as to the registration of plan amendments).

My conclusion that the original provision of the Plan dealing with the treatment of the Pension Fund on discontinuance remained in effect at the wind up of the Plan disposes of the IOF's challenge to the Superintendent's Notice of Proposal. That provision requires that the Pension Fund, including any surplus, is to be applied for the benefit of the members of the Plan, with the result that the Plan cannot be said to provide for the payment of surplus to the employer, the IOF, on the wind up of the Plan. Therefore, the Superintendent is obliged, under subsection 79(3) of the Act, to refuse IOF's application for consent to the payment of surplus from the Plan. It follows, as well, that the Superintendent is entitled, under subsection 70(5) of the Act, to refuse to approve the report filed by the IOF in respect of the wind up of the Plan, for failure to protect the interests of the members of the Plan, in particular their interests in the surplus on wind up. Such refusals are, therefore, properly proposed by the Superintendent in the Notice of Proposal.

The other members of the Panel who heard this case would support the proposed refusals of the Superintendent on a different basis, as their separate reasons indicate, namely what they see as the overriding effect, upon the terms of the Plan, of the two successive trust agreements that the IOF entered into with respect to the Pension Fund. As I disagree with their reasons in that respect, I will go on to set out my views as to the impact of those agreements.

4. The Effect of the Trust Agreements Entered into by the IOF as of 1995 and 1999

The IOF entered into a Trust and Master Custodial Services Agreement with the Trust Company of Bank of Montreal effective as of June 21, 1995 (the "1995 Trust Agreement") engaging the trust company to serve as trustee and to provide certain custodial services, all in respect of the Pension Fund. Upon the resignation of the original trust company as trustee, the IOF entered into a similar agreement with CIBC Mellon Trust Company made as of October 1, 1999 (the "1999 Trust Agreement").

The Superintendent argued that, even if the 1988 Surplus Amendment was valid, its provision for the payment of surplus to the IOF was subservient to the trust in respect of the Pension Fund established, successively, by the 1995 and 1999 Trust Agreements. Since those Agreements did not expressly designate the IOF as a beneficiary of the trust, the IOF was no longer entitled, in the Superintendent's view, to the payment of surplus under the Plan. The IOF responded by saying that each of the Trust Agreements must be read in conjunction with the terms of the Plan, in which case it is clear that the IOF is identified as a person to which payments from the Pension Fund may be made and is, consequently, a beneficiary of the trust in respect of that Fund. The IOF argued, in the alternative, that each of the Trust Agreements expressly reserved to the IOF the power to revoke the trust, in which case it was within its power to bring the trust to an end, thereby effectively restoring the provision for the payment of surplus to the IOF under the 1988 Surplus Amendment.

The other members of the Panel, in their separate reasons rely on a passage from the majority decision of Mr. Justice Cory in *Schmidt* to the effect that the transfer of property by the settlor of a trust to the trustee is generally absolute and that any control of that property will be lost unless the transfer is expressly subject to it. However, the issue in the present case is not whether the IOF effectively reserved the power, under the terms of the Trust Agreements, to designate itself as a beneficiary of the trust when it transferred the Pension Fund to the trustee but whether

those terms indicate that the IOF was a beneficiary of the trust from the time of its creation.

The Superintendent was unable to provide us with any authority for the proposition that the settlor of a trust may not be a beneficiary of the trust unless expressly named as such or that a plan sponsor may not be a beneficiary of a trust in respect of a pension plan unless expressly named as such. I believe that the proper inquiry in the present case should be whether the IOF can be taken to be a beneficiary of the trust created by the Trust Agreements having regard to the express terms of those Agreements and any implications that can be reasonably drawn from those terms. Certainly, the absence of the word "beneficiary" in the Trust Agreements, to describe any interest the IOF may have in the Pension Fund, should not be determinative.

The Trust Agreements leave it to the IOF to provide instructions to the trust company as to the payments that are to be made from the Pension Fund. Any such instructions are deemed to constitute a "certification ... that such payments are in accordance with the ... Plan" (section 4(h) of the 1995 Trust Agreement and section 5.1 of the 1999 Trust Agreement). The Trust Agreements also provide that upon termination of the trust fund that comprises the Pension Fund, payments shall be made therefrom in accordance with the directions of the IOF (section 8 of the 1955 Trust Agreement and section 16.3 of the 1999 Trust Agreement), although in the case of the 1999 Trust Agreement those directions are to be in accordance with the terms of the Plan. To me, all of this means quite simply that the IOF is a beneficiary of the trust to the extent that the Plan provides for the payment of some part of the Pension Fund to the IOF. The 1988 Plan Amendment, which if valid is part of the Plan, makes such provision in respect of any surplus in that Fund.

The Trust Agreements make it clear that the role of the trust company as trustee does not extend to determining entitlements under the Plan. When it comes to the payment of amounts from the Pension Fund, the role of the trust company may be characterized as that of a "bare trustee" who must simply respond to the directions of the IOF. Therefore, with respect to distributions from the Pension Fund, the trustee acts, essentially, as an agent for the IOF, the settlor of the trust. In that kind of situation, the agency relationship with the settlor predominates over the trust aspect of the arrangement (see *Trident Holdings Ltd. v. Danand Investments Ltd.* (1988), 64 O.R. (2d) 65, at pp. 73-79 (Ont. C.A.)). Therefore, in the present case, the trust should not be taken to inhibit the right of the IOF to call for the payment to it of any surplus, in accordance with the Plan and, in particular, the 1988 Surplus Amendment, if valid.

The Superintendent relied on a statement of Mr. Justice Cory, giving the majority judgment of the Supreme Court in *Schmidt*, to the following effect:

> ...when a trust is created [in respect of a pension fund], the funds which form the corpus are subjected to the requirements of trust law. The terms of the pension plan are relevant to distribution issues only to the extent that those terms are incorporated by reference in the instrument which creates the trust. The contract or pension plan may influence the payment of trust funds but its terms cannot compel a result which is at odds with the existence of the trust. (At pp. 639-640.)

For the reasons set out above, I do not regard the Plan as compelling a result that is at odds with the trust established by the 1995 or 1999 Trust Agreement, but rather as having the capacity to influence payments from the

Pension Fund in a way that is not inconsistent with the trust. While neither Agreement may, technically, incorporate the terms of the Plan, I do not believe that this should preclude the operation of those terms in the circumstances of the present case, given the limited scope of the trust. Each of the Agreements certainly references the terms of the Plan, leaving them to govern the ultimate disposition of the assets in the Pension Fund. It seems to me that this comes to the same thing as incorporating the terms of the Plan by reference into the trust instrument.

Finally, I am of the opinion that each of the Trust Agreements provides expressly for the revocation of the trust that it creates and, therefore, that the IOF could exercise the power of revocation so as to leave the provisions of the Plan to operate unaffected by the existence of a trust in respect of the Pension Fund. Each of the Agreements provides specifically for the termination by the IOF of the trust fund comprising the assets of the Pension Fund (section 8 of the 1995 Trust Agreement and section 16.3 of the 1999 Trust Agreement). In either case, the relevant provision has a broad scope and is not limited to situations where the trust company has resigned or been removed and is to be replaced by a new trustee. It seems to me that a termination of a trust fund by the settlor amounts to the revocation of the trust and that there is no particular magic in the use of language of revocation as opposed to termination or cancellation. Indeed, The Supreme Court in Schmidt said that the word "revocation" connotes cancellation (at p. 646) and "termination" is certainly very close, in its ordinary meaning, to "cancellation". The revocation of something is simply the termination or cancellation of that thing where it was originally created by the person exercising a power of revocation. Unlike my fellow Panel members, I can find nothing in *Schmidt* that suggests that an express power on the part of the settlor of a trust to terminate the trust fund does not amount to an express power to revoke the trust.

5. The Remaining Significance of the Issue of Whether the Excess Assets in the Pension Fund Constitute Surplus

I agree with the other members of the Panel that it is not necessary for the Tribunal to hear argument on the issue of whether the excess assets in the Pension Fund represent surplus. If they do not, the Superintendent would have two proper grounds for refusing approval of the application for the payment of surplus and of the wind up report in respect of the Plan. If the excess assets do constitute surplus, the Superintendent's proposals to refuse those approvals are, nonetheless, supportable on the basis that the Plan does not provide for the payment of such surplus to the IOF. We are, therefore, in a position to dispose of the matter that is before us without the need for a further hearing on the issue of whether there is any surplus in the Pension Fund.

Disposition

Although I disagree with the other Panel members in their conclusion as to the effect of the Trust Agreements, I concur in their ultimate disposition of this case. I reach that common result because of my conclusion that the 1988 Plan Amendment is invalid.

DATED at Toronto, Ontario, this 16th day of September, 2002.

Colin H.H. McNairn,
Vice Chair of the Tribunal and Chair of the Panel

REASONS FOR DECISION OF MR. ERLICHMAN AND MS. GAVIN

Background

We adopt the Background as set out in the separate Reasons of Mr. McNairn.

Analysis

The Superintendent and IOF asked the Tribunal to rule on the issue of whether the Plan provides for the payment of surplus to IOF. Since this is a necessary, though not sufficient, condition under subsection 79(3) of the Act, for any payment of surplus to the employer, a negative ruling on this issue would be determinative with respect to the Superintendent's Notice of Proposal, and no further hearing on the other issues would be required. In effect, if the Plan did not provide for the payment of surplus to IOF, the existence of a surplus and other possible issues arising in this case would be moot. A positive ruling could require a hearing of other issues.

Accordingly, the representations at this hearing focused quite narrowly on the language of the Plan text, trust agreements and other documents related to the pension plan. Counsel for both IOF and the Superintendent relied heavily on the leading Supreme Court of Canada case on pension plan surpluses, *Schmidt v. Air Products Canada Ltd.* [1994] 2 S.C.R. 611 (*Schmidt*).

In *Schmidt*, the Supreme Court said: "the first question to be decided in a pension surplus case is whether or not a trust exists" (p. 639).

In 1995, the IOF entered into a Trust and Master Custodial Services Agreement with the Trust Company of the Bank of Montreal, effective as of June 21, 1995 (the "1995 Trust Agreement") engaging the trust company to serve as trustee and to provide certain custodial services with respect to the Pension Fund. Upon the resignation of the original trust company as trustee, the IOF entered into a similar agreement with CIBC Mellon Trust Company as of October 1, 1999 (the "1999 Trust Agreement").

It was not disputed by the parties that the pension plan was a pension trust from the time of 1995 Trust Agreement. In *Schmidt*, the Supreme Court said (at p. 643):

> When a pension fund is impressed with a trust, that trust is subject to all applicable trust law principles. The significance of this for the present appeals is twofold. Firstly, the employer will not be able to claim entitlement to funds subject to a trust unless the terms of the trust make the employer a beneficiary, or unless the employer reserved a power of revocation of the trust at the time the trust was originally created. Secondly, if the objects of the trust have been satisfied but assets remain in the trust, those funds may be subject to a resulting trust.
>
> The settlor of a trust can reserve any power to itself that it wishes provided the reservation is made at the time the trust is created. A settlor may choose to maintain the right to appoint trustees, to change the beneficiaries of the trust, or to withdraw the trust property. Generally, however, the transfer of the trust property to the trustee is absolute. Any power of control of that property will be lost unless transfer is expressly made subject to it.

IOF argued that, as the 1995 Trust Agreement names no specific beneficiaries and does not explicitly prohibit IOF from being a beneficiary, IOF was not precluded from being a beneficiary of the fund. Further, IOF cited the language of the trust agreement, which allowed it to instruct the trust company with respect to payments from the trust in accordance with the provisions of the pension plan, and to designate

the direction of trust property if the trust agreement were terminated, to argue that 1995 Trust Agreement gave IOF the power to designate itself a beneficiary of the trust.

The 1995 Trust Agreement defines the "Trust Fund" as "the securities or other properties delivered to or held by Trustco [Trust Company of the Bank of Montreal] from time to time and constituting the pension fund of the Pension Plan to be held as trust properties pursuant to the terms of this Agreement including the proceeds and income therefrom" (Paragraph 1(m)). The 1995 Trust Agreement also authorizes the Trust Company "to make payments ... in accordance with the provisions of the Pension Plan" (Paragraph 4(h)). Members of the pension plan are obviously beneficiaries of a pension trust set up to provide pension benefits to plan members.

On the other hand, it cannot be assumed that the employer, IOF, is a beneficiary of the trust. This would require a clear statement in the 1995 Trust Agreement, and not the general powers given to IOF as plan administrator. As there was no such clear statement, IOF is not a beneficiary of the trust.

IOF argued that Section 22 of the 1995 Trust Agreement, which allowed IOF to direct the distribution of trust property on the termination of the trust agreement, had the effect of reserving for IOF the power to revoke the trust. This proposition does not accord with the *Schmidt* decision, in which the Supreme Court said (at p. 646) that the power to revoke cannot be read into a trust agreement without "extremely clear and explicit language." The Supreme Court continued:

> A general amending power should not endow a settlor with the ability to revoke the trust. This is especially so when it is remembered that consideration was given by the employee beneficiaries in exchange for the creation of the trust. In the case of pension plans, employees not only contribute to the fund, in addition they almost invariably agree to accept lower wages and fewer employment benefits in exchange for the employer's agreeing to set up the pension trust in their favour. The wording of the pension plan and trust instrument are usually drawn up by the employer. The employees as a rule must rely upon the good faith of the employer to ensure that the terms of the specific trust arrangement will be fair. It would, I think, be inequitable to accept the proposition that a broad amending power inserted unilaterally by the employer carries with it the right to revoke the trust. The employer who wishes to undertake a restricted transfer of assets must make those restrictions explicit. Moreover, amendment means change not cancellation which the word revocation connotes.

In fact, the Supreme Court specifically ruled, in *Schmidt*, that the power in the original trust document of the Catalytic pension plan to direct the distribution of trust funds on plan termination did not constitute a right of revocation.

IOF also argued that the pension plan text, which was amended in 1990 to provide for surplus to revert to IOF on plan wind-up, was implicitly incorporated into the 1995 Trust Agreement. As a result, it was argued, IOF was a beneficiary of the Plan, particularly with respect to surplus on wind up, at the time of the first trust agreement.

Here again, the Supreme Court set a high standard for the incorporation of pension plan language into the terms of a trust. To quote the *Schmidt* decision once more (at pp. 639-640):

> The terms of a pension plan are relevant to distribution issues only to the extent that

those terms are incorporated by reference in the instrument which creates the trust. The contract or pension plan may influence the payment of trust funds but its terms cannot compel a result which is at odds with the existence of the trust.

In this case, the references within the 1995 Trust Agreement to the provisions of the Pension Plan can influence payments from the Pension Fund, but, in the absence of an explicit incorporation by reference, the terms of the Plan Text cannot be used to read either IOF's rights as a beneficiary or the right of revocation into the 1995 Trust Agreement.

The one other avenue by which IOF might claim entitlement to pension plan surplus is through the creation of a resulting trust, if the objects of the trust have been fully satisfied and money still remains in the trust fund. The clear object of this trust was to provide pension benefits to plan members. In a defined contribution plan, such as the IOF Plan, the object is to provide whatever benefits can be generated from contributions and investment earnings, and there is no reasonable basis for arguing that the object of the trust has been met, while assets remain in the trust. There is therefore no resulting trust created in this case.

We therefore conclude that, as IOF is not a beneficiary of the trust, nor does it have the power to revoke the trust, nor has a resulting trust been created, consequently the Plan does not provide for the payment of surplus to IOF.

In light of these conclusions, we see no need to deal with the other arguments raised by the parties concerning IOF's entitlement to surplus.

Disposition

We direct the Superintendent to carry out the Notice of Proposal dated March 19, 2001, refusing to consent to an application by the IOF for the payment of surplus from the Plan on its windup and to approve the wind up report in respect of the Plan.

DATED at Toronto, Ontario, this 16th day of September, 2002.

Louis Erlichman
Member of the Tribunal and the Panel

Heather Gavin
Member of the Tribunal and the Panel

INDEX NO.:	FST File Number P0130-2000
PLAN:	Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 (the "IOL Plan") and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac, Registration Number 344002 (the "MFI Plan")
DATE OF DECISION:	September 20, 2002
PUBLISHED:	Bulletin 12/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF partial wind up reports submitted by Imperial Oil Limited to the Superintendent of Financial Services respecting the Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 (the "IOL Plan") and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac, Registration Number 344002 (the "MFI Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:

IMPERIAL OIL LIMITED
Applicant
-and-
SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

BEFORE:

Mr. Colin H.H. McNairn
Vice Chair of the Tribunal and Chair of the Panel

Mr. Louis Erlichman
Member of the Tribunal and of the Panel

Mr. William M. Forbes
Member of the Tribunal and of the Panel

APPEARANCES:

For Imperial Oil Limited:
Ms. Lindsay P. Hill

For the Superintendent of Financial Services:
Ms. Deborah McPhail

HEARING DATE:
July 24, 2002

REASONS FOR ORDER

The Background

This proceeding was initiated by the Applicant, Imperial Oil Limited, by filing a Notice of Request for Hearing with the Tribunal. The Request calls into question a Notice of Proposal by the Superintendent of Financial Services (the "Superintendent"), dated October 3, 2000, to refuse to approve partial wind up reports (the "Partial Wind Up Reports" or the "Reports") filed by the Applicant in connection with the partial wind up of two of its pension plans, namely its IOL Plan and its MFI Plan (the "Plans"). The partial wind ups had been ordered by the Superintendent because of a reorganiza-

tion of the Applicant and the discontinuance of one of its businesses brought about by the closure of a refinery. The Plans were to be wound up in relation to those members and former members who ceased to be employed by the Applicant, as a result of the reorganization or discontinuance, during the period beginning February 4, 1992 and ending on the later of June 30, 1995 and the date the last member employed at the refinery ceased employment (the "Partial Wind Up Period"). We refer to this group of members and former members as the "Partial Wind Up Group".

The stated grounds for the Superintendent's proposal in the Notice of Proposal include the failure of the Reports to reflect the liabilities associated with all those who were part of the Partial Wind Up Group. Specifically, the Notice of Proposal states that the Reports do not reflect the liabilities associated with 2311 members of the Plans (2213 members of the IOL Plan and 98 members of the MFI Plan).

By a notice of motion dated June 5, 2002, the Superintendent moved for an order of the Tribunal directing the Applicant to answer certain of the interrogatories that it had served on the Applicant on October 11, 2001. The Applicant has responded to some but not all of the original interrogatories.

The Issues in the Proceeding

For the purposes of this motion, the parties agreed that the issues in this proceeding that are relevant to the motion should be framed as follows (the "statement of issues"):

> Did any members or former members of the Plans who ceased to be employed by the Applicant during the Partial Wind Up Period as set out in the Notice of Proposal cease to be employed as a result of the reorganization or discontinuance of all or part of the Applicant's business, if their circumstances fell within one of the following:
>
> (i.) employees whose fixed term contract of employment was complete by its terms (e.g. summer students, co-op students, and employees hired on a contract basis for a specified period of time);
>
> (ii.) employees who became disabled and received disability benefits;
>
> (iii.) employees who allegedly voluntarily resigned;
>
> (iv.) employees who were transferred to an affiliated company that did not participate in the Plans;
>
> (v.) employees who retired under the terms of the Plans at normal retirement age;
>
> (vi.) employees who retired under the disability retirement provisions of the Plans;
>
> (vii.) employees whose employment was terminated as a result of death; and
>
> (viii.) employees whose employment was allegedly terminated for cause.

There are other issues that will have to be addressed at the main hearing in this proceeding, but none of the interrogatories to which this motion relates concern those other issues.

The Interrogatories

The interrogatories to which the Superintendent insists on responses can be summarized as follows:

(a) did the positions filled by any members of the either of the Plans whose contracts of employment expired during the Partial Wind Up Period cease to exist as a result of the reorganization or discontinuance of the Applicant's business?

(b) was any member of either of the Plans terminated for cause during the Partial Wind Up Period (if so, provide the name and last-known address of the member, the date and reason for termination and any supporting documentation)?

(c) in the case of any member of either of the Plans who, during the Partial Wind Up Period,

(i.) was on leave or other interruption of employment due to disability,

(ii.) retired under a disability retirement under the terms of either of the Plans,

(iii.) voluntarily terminated his or her employment,

(iv.) retired at early retirement under the terms of either of the Plans, or terminated for cause, was that member's job function or title eliminated during the reorganization or discontinuance of the Applicant's business?

(d) did the Applicant ever re-hire, to permanent or contract positions, students who had worked with the Applicant on a co-op or summer placement; if so, how many were hired in the five year period prior to the wind up and how many of these assumed newly-created or entry-level positions; were any of the latter positions eliminated as a result of the reorganization or discontinuance of the Applicant's business; and in all of these situations what were the details?

The Purpose

The Superintendent maintained that the purpose of the outstanding interrogatories was to elicit information that would be responsive to any argument of the Applicant that specific members or generic groups of members should be excluded from the Partial Wind Up Group, for the purposes of calculating the liabilities to members in the Partial Wind Up Reports, and to simplify and narrow the issues in this proceeding. The Superintendent indicated that his position at the main hearing in this proceeding would be that all those members of the Plans who ceased to be employed by the Applicant during the Partial Wind Up Period should be included in the Partial Wind Up Group unless the Applicant can show cogent reasons why they should not be included.

Analysis

The test that this Tribunal has consistently applied for deciding whether pre-hearing disclosure should be ordered is set out in *Monsanto Canada Inc. v. Superintendent of Financial Services* (see the Pension Bulletin, vol. 8, issue 2 (Sept., 1999), at pp. 77-82). In that case, the Tribunal said (at p. 79):

> We believe that the Tribunal should, generally, be prepared to make a disclosure order against a party to a proceeding before it, requiring the production of documents or answers to interrogatories, in the following circumstances (if not in other circumstances):
>
> - the information sought is arguably relevant to an issue in the proceeding and that issue is not a frivolous one;
> - the information sought is sufficiently particularized that the party from whom the information is requested should be able to respond efficiently and with a reasonable degree of precision; and
> - the information is not privileged.

For the purpose of applying the first limb of this test, relevance to an issue in the proceeding means relevance to an issue in the proceeding before the Tribunal, not the larger proceeding that includes the process that takes place before

the Superintendent, acting through one or other of the branches of the Financial Services Commission of Ontario.

Rule 19.01 of the Interim Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal describes the purpose of interrogatories as follows;

> 19.01 The Tribunal may issue procedural directions providing for interrogatories that are necessary to:
>
> (a) clarify evidence filed by a party;
>
> (b) simplify the issues;
>
> (c) permit a full and satisfactory understanding of the matters to be considered; or
>
> (d) expedite the proceeding.

Once again, the proceeding means the proceeding before the Tribunal.

The statement of issues that the parties have agreed to for the purposes of this motion presupposes that categorical answers can be provided as to whether all employees whose circumstances fall within any of categories (i.) to (viii.) can be said to have ceased to be employed as a result of the reorganization or discontinuance of all or part of the Applicant's business. But that may not be the case. For instance, this Tribunal might be inclined to the view that while the employees whose circumstances fall within a particular category should be excluded from the Partial Wind Up Group, there is a sub-category or sub-categories of those employees that should be included. One such sub-category might be employees whose positions, job titles or functions were eliminated during the reorganization or discontinuance of the Applicant's business. The answers to many of the Superintendent's interrogatories might inform the case for recognizing such a sub-category, or the case for not recognizing such a sub-category, as they would reveal the dimensions of the potential sub-category.

All of this is not to suggest that the Superintendent has conceded that those employees whose circumstances fall within any of categories (i.) to (viii.) should, generally, be excluded from the Partial Wind Up Group, subject only to inclusion if their positions, job titles or functions were eliminated during the reorganization or discontinuance of the Applicant's business. In fact, there has been no such concession. Nonetheless, we think that the answers to the interrogatories are arguably relevant to the issues in this proceeding, although we think that it is sufficient if the Applicant were to respond by providing general or statistical, rather than employee-specific, information about the positions, job titles or functions of employees whose circumstances fall within each of categories (i.) to (viii.). That information would contribute to permitting a full and satisfactory understanding of the matters that may be considered in this proceeding and it could expedite the proceeding by avoiding the need for obtaining supplementary information at a later stage in the proceeding. The promotion of that understanding and the expedition of the proceeding are among the purposes of interrogatories set out in Rule 19.01 of the Interim Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal.

We now address the particular interrogatories posed by the Superintendent in light of the approach set out above. We deal with interrogatory (a.) in our discussion of interrogatory (c.) below. Interrogatory (b.) asks, among other things, whether any member of either of the Plans was terminated for cause during the Partial Wind Up Period. The Applicant has already answered "yes" to this question, in a letter dated February 28, 2002 to counsel for the

Superintendent, and has provided some particulars about the situations where members of the Plans were terminated for cause during the Partial Wind Up Period. We decline to order the Applicant to provide any further particulars of this kind as that information is member-specific and is not, in our view, arguably relevant to the issues in this proceeding.

Interrogatory (c.) would seem to call for information relating to each and every member falling within any of categories (i.) to (v.) whose job function or title was eliminated during the reorganization or discontinuance of the Applicant's business. The disclosure of such member-specific information is not, in our view, relevant to the issues in this proceeding. However, we would order the Applicant to respond to more general questions, by way of a revised interrogatory in place of interrogatories (a.) and (c.), as follows:

- how many of the 2311 members of the Plans who ceased to be employed by IOL during the Partial Wind Up Period but were excluded from the Partial Wind Up Group were in the circumstances described in each of the following categories:
  - (i.) on fixed term contracts of employment that were complete by their terms (e.g. summer students, co-op students, and employees hired on a contract basis for a specified period of time);
  - (ii.) on leave or other interruption of employment due to disability;
  - (iii.) retired under a disability retirement under the terms of either of the Plans;
  - (iv.) voluntarily terminated employment;
  - (v.) retired at early retirement under the terms of either of the Plans; or
  - (vi.) terminated for cause?
- what proportion of the members in category (i.) had their positions eliminated at or following the cessation of their employment with the Applicant but during the reorganization or discontinuance of the Applicant's business and what proportion of the members in each of categories (ii.) to (vi.) had their job titles or functions eliminated at or following the cessation of their employment with the Applicant but during the reorganization or discontinuance of the Applicant's business?

We recognize that the Superintendent may already have been advised, in respect of some or all of categories (i.) to (vi.), of the number of members whose circumstances fall within a particular category.

Interrogatory (d.) asks, among other things, whether the Applicant ever re-hired, to permanent or contract positions, students who had worked with the Applicant on a co-op or summer placement. The Applicant has already answered "yes" to this question, in a letter dated February 28, 2002 to counsel for the Superintendent. We decline to order the Applicant to provide a response to the balance of interrogatory (d.) as it does not seem to us to be arguably relevant to the issues in this proceeding.

Disposition

Therefore, we make the order against the Applicant set out in Appendix A, directing it to respond to the Superintendent in respect of the interrogatories posed in that Appendix. The Superintendent requested that the time for the Applicant's response to the interrogatories be thirty days from the date of our order. However, we have set a time limit of six weeks from that date for response. This coincides with the time limit that we have imposed on the Superintendent, by order dated September 11, 2002, for

responses to outstanding interrogatories of the Applicant in this same proceeding.

DATED at Toronto, Ontario, this 20th day of September, 2002.

Colin H.H. McNairn,
Vice Chair of the Tribunal and Chair of the Panel

Louis Erlichman,
Member of the Tribunal and of the Panel

William M. Forbes,
Member of the Tribunal and of the Panel

Appendix A

Imperial Oil Limited (the "Applicant") is hereby ordered to provide answers to the Superintendent of Financial Services in respect of the interrogatories set out below within six weeks of the date of this order:

- how many of the 2311 members of the Plans who ceased to be employed by IOL during the Partial Wind Up Period but were excluded from the Partial Wind Up Group were in the circumstances described in each of the following categories:
  - (i.) on fixed term contracts of employment that were complete by their terms (e.g. summer students, co-op students, and employees hired on a contract basis for a specified period of time);
  - (ii.) on leave or other interruption of employment due to disability;
  - (iii.) retired under a disability retirement under the terms of either of the Plans;
  - (iv.) voluntarily terminated employment;
  - (v.) retired at early retirement under the terms of either of the Plans; or
  - (vi.) terminated for cause?
- what proportion of the members in category (i) had their positions eliminated at or following the cessation of their employment with the Applicant but during the reorganization or discontinuance of the Applicant's business and what proportion of the members in each of categories (ii) to (vi) had their job titles or functions eliminated at or following the cessation of their employment with the Applicant but during the reorganization or discontinuance of the Applicant's business?

The capitalized terms in this order have the same meaning as those terms as used in the Reasons for Order of the Financial Services Tribunal that accompany, and provide the basis for, this order.

DATED this 20th day of September, 2002.

INDEX NO.: FST File Numbers P0166-2001& P0175-2001

PLAN: Samsonite Canadian Service Related Plan, Registration No. 398578 and Samsonite Canadian Retirement Income Plan, Registration No. 373225

DATE OF DECISION: October 21, 2002

PUBLISHED: Bulletin 12/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services (the 'Superintendent") to Refuse to Consent to an application by Samsonite Canada Inc. for the payment of surplus to the employer from the Samsonite Canadian Service Related Plan, Registration No. 398578 and a proposal by the Superintendent to Refuse to Consent to an application by Samsonite Canada Inc. for the payment of surplus to the employer from the Samsonite Canadian Retirement Income Plan, Registration No. 373225;

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:
SAMSONITE CANADA INC.
Applicant
-and-
SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

BEFORE:

Ms. Martha Milczynski
Chair of the Tribunal and of the Panel

Mr. David Short
Member of the Tribunal and of the Panel

Mr. William Forbes
Member of the Tribunal and of the Panel

APPEARANCES:

For Samsonite Canada Inc.:
Mr. Greg Winfield

For the Superintendent of Financial Services:
Mr. Mark Bailey

HEARING DATES:
June 3, 2002

REASONS

INTRODUCTION

Samsonite Canada Inc. (the "Company") has requested a hearing before the Financial Services Tribunal (the "Tribunal") with respect to two Notices of Proposal (together the "NOPs" and each the "NOP") issued by the Superintendent of Financial Services (the "Superintendent").

The NOP dated June 1, 2001 relates to the Company's application to the Superintendent to withdraw surplus from the Samsonite Canadian Service Related Plan, registration

No. 398578 (the "Hourly Plan"). As at the wind-up date, the Hourly Plan had surplus assets of approximately $727,200. The Company proposed to distribute $360,800 to Hourly Plan members and former members as benefit improvements, and $366,400 was to be paid to the Company. The Company's proposal received consent from 88% of active members and 72% of inactive members.

The NOP dated October 11, 2001 relates to the Company's application to the Superintendent to withdraw surplus from the Samsonite Canadian Retirement Income Plan, registration No. 373225 (the "Salaried Plan"). As at the wind up date, the Salaried Plan had surplus assets of approximately $747,400. The Company proposed to distribute $396,900 to Salaried Plan members and former members as benefit improvements, and $350,500 was to be paid to the Company. The Company's proposal received consent from 93% of the active members and 79% of inactive members.

The Hourly and Salaried Plans were terminated by the Company effective January 31, 1998.

Each of the Superintendent's NOPs proposed to dismiss the Company's application to withdraw surplus on the grounds that the terms of the Hourly Plan and Salaried Plan do not provide for "payment of surplus to the employer on the wind-up of the pension plan", and that consequently, the applications' compliance with subsection 79(3)(b) of the *Pensions Benefits Act* (the "PBA") was not established.

For the reasons set out below, the Tribunal affirms the Superintendent's NOPs. Although each of the current versions of the Hourly and Salaried Plans contain provisions that provide for the Company's entitlement to surplus on plan termination, such provisions are the product of amendments made to the Plans in 1980 that are contrary to the terms of the original (1969) Hourly and Salaried Plans and Trust documents.

The original Plan documents expressly and irrevocably restricted the scope of the Company's authority or ability to amend the terms of the Hourly and Salaried Plans and/or to receive payment of surplus upon the Plans' termination.

PBA REQUIREMENTS FOR SURPLUS WITHDRAWALS

The PBA and regulations establish a comprehensive regulatory regime for the withdrawal of surplus monies by employers from ongoing pension plans and from terminated pension plans. The regulatory requirements include provisions addressing notice to plan members and former members, the preparation and filing of valuation reports, and obtaining the requisite level of member/former member consent and, where applicable, the consent of any bargaining agent.

The only issue concerning the Company's applications for surplus withdrawal from each of the Hourly and Salaried Plans, however, is whether or not the following PBA requirement was satisfied:

> **ss. 79(3)** Subject to subsection 89 (hearing and appeal), the Superintendent shall not consent to an application by an employer in respect of surplus in a pension plan that is being wound up in whole or in part unless, ...
>
> **(b)** the pension plan provides for payment of surplus to the employer on the wind up of the pension plan, ...

HOURLY AND SALARIED PLAN AND TRUST PROVISIONS

The Hourly and Salaried Plans were originally established in 1969 and in addition to pension plan documentation, included a trust agreement for each of the plans with The Canada Trust Company.

The relevant provisions of the text of the original plan documents for the Hourly Plan and for the Salaried Plan are, in all material respects, identical. Subsections 5.1, 7.1 and 7.2 of the original Hourly and Salaried Plans provide as follows:

ARTICLE V: CONTRIBUTIONS AND FINANCING

5.1 The Company shall make annual contributions to the Trustee, on the basis of qualified actuarial advice, in the amount necessary to provide benefits earned under the Plan during the year, and shall pay administrative expenses incident to the operation and management of the Plan. Any unfunded liability, or experience deficiency arising from the funding of benefits herein provided shall be liquidated in the manner prescribed by the *Ontario Pension Benefits Act* of 1965 (including any amendments thereto) and related regulations, or other provisions of law applicable to the Plan.

The Company shall have no right, title, or interest in the contributions made by it to the Trustee, and no part of Plan assets shall revert to the Company except that any excess contributions as may have been made by the Company as a result of errors may revert to the Company.

The benefits of the Plan shall be only such benefits as can be provided by Plan assets, and there shall be no liability or obligation on the part of the Company to make any further contributions to the Trustee in the event of termination of the Plan except as otherwise provided under the *Ontario Pension Benefits Act* of 1965 (including any amendments thereto) and related regulations or other provisions of law applicable to the Plan. No liability for the payment of benefits under the Plan shall be imposed upon the Company or any officer, director, or stock-holder of the Company.

ARTICLE VII: AMENDMENT — TERMINATION — LIMITATION

7.1 The Company hopes and expects to continue the Plan indefinitely but necessarily reserves the right to amend or terminate the Plan at any time or from time to time for any reason.

No such action by the Company shall operate to recapture for the Company any contributions previously made under the Plan by the Company prior to the satisfaction of all liabilities for Plan benefits.

Except to the extent required to permit the Plan to meet the requirements of the *Ontario Pension Benefits Act* of 1965, as amended, the *Canadian Income Tax Act*, or the requirements of any governmental authority, no such action by the Company shall affect adversely in any way any rights previously acquired under the Plan by retired Participants.

7.2 In the event of the termination of this Plan, the assets then in the possession of the Trustee shall be allocated, subject to provision for expenses incident to said termination, to the extent that they shall be sufficient, for the exclusive benefit of the then retired Participants and all other Participants or former Participants and their beneficiaries having an interest in this Plan. Such assets shall, subject to approval of the Ontario Pension Commission, be allocated to such persons in the following order of precedence:

(a) To provide for the continuance of Pensions to retired Participants and their beneficiaries, if any;

(b) If any assets remain after complete allocations for the purposes of (a) above, they shall be allocated toward the potential rights of non-retired Participants or former Participants eligible for a normal, deferred, early, or disability pension on an equitable

and nondiscriminatory basis according to accepted actuarial principles;

(c) If any assets remain after complete allocations for the purposes of (a), and (b) above, they shall be allocated toward the potential rights of non-retired Participants not included in the allocations under (a), and (b) above, on an equitable and nondiscriminatory basis according to accepted actuarial principles;

(d) If any assets remain after complete allocations for the purposes of (a), (b), and (c) above, they shall be used to increase the benefits provided pursuant to the allocations made under (a), (b) and (c) above, on an equitable and nondiscriminatory basis according to accepted actuarial principles.

If the Ontario Pension Commission does not approve the foregoing method of allocation then the method shall be modified, where necessary, so that such approval can be received.

The above allocations shall be distributed by the Trustee in annuities or in such other manner as may be agreed upon by the Company and the Trustee. No Participant or other Employee or person shall have any rights or claims under the Plan beyond the capacity of the assets held by the Trustee to provide benefits in accordance with the above provisions.

The Hourly and Salaried Plans' Trust Agreements were made as at April 1, 1969. Each agreement provided that assets in the trust fund were to be used for "the exclusive benefit of such persons or their estates as may from time to time be designated in or pursuant to the Plan". Each agreement also contained a provision that their terms could not be amended so as to "authorize or permit any part of the Fund to be used for or diverted to purposes other than for the exclusive benefit of such persons and their estates as from time to time may be designated in or pursuant to the Plan".

ANALYSIS

The Company made submissions to the Tribunal that since inception and consistent with the original Hourly and Salaried Plan documentation, the Company was a "beneficiary" or "contingent beneficiary" under the terms of the Plans and Trust Funds and that therefore, the amendments made subsequently in 1980 to expressly provide for payment of surplus to the employer on plan termination were valid. The Company also made submissions that the 1980 amendments were consistent with the amending authority the Company reserved to itself in the original Plan and trust documentation. Such pension plan and trust provisions must, however, be express, unambiguous and clear to satisfy the "high bar" enunciated in *Schmidt v Air Products Canada Limited* [1994] 2SCR611. As the excerpts from *Schmidt* that are set out in *Kent v Tecsysn International Inc.*(2000), 133 O.A.C. 312 (Ont. Div. Ct.) indicate:

Cory J. (for the majority) said:

> Page 643: The Settlor of a trust can reserve any power to itself that it wishes provided that the reservation is made at the time the trust is created. The Settlor may choose to maintain the right to appoint trustees, to change the beneficiaries of the trust, or to withdraw the trust property. Generally, however, the transfer of the trust property to the trustee is absolute. Any power of control of that property will be lost unless the transfer is expressly made subject to it.
>
> Page 647: As a result I find that, at least in the context of pension trusts, the reservation by the Settlor of an unlimited power of amendment does not include a power to revoke the trust. A revocation power must be explicitly reserved in order to be valid.
>
> Page 656: The employer, as a Settlor of the trust, may reserve the power to revoke the

> trust. In order to be effective, that power must be clearly reserved at the time the trust is created. The power to revoke the trust or any part of it cannot be implied from the general unlimited power of amendment.
>
> Page 659: In my opinion, the purposes of the trust were not fully satisfied by the payment of all defined benefits. One of the objects of the trust was to use any money contained in the fund for the benefit of the employees.

In the case at hand, the Company did not satisfy the Tribunal that there was the clear and unambiguous language in either the Hourly or the Salaried Plan documentation that would permit the Company to participate in any distribution of surplus assets on Plan termination or that would permit an amendment to the Plans to be made subsequently, to give effect to such distribution. The requirements of Subsection 79(3)(b) of the PBA have not been met to the high standard required to establish employer entitlement to surplus.

ORDER

Accordingly, the Tribunal affirms each of the Superintendent's NOPs and directs the Superintendent to dismiss the Company's applications for surplus withdrawal.

The Tribunal will remain seized for the purposes of considering either party's request for costs, such request and submissions to be made in writing within 30 days of this order.

DATED at Toronto, Ontario, this 21st day of October, 2002.

Martha Milczynski,
Chair of the Tribunal and of the Panel

William Forbes,
Member of the Tribunal and of the Panel

David Short,

Member of the Tribunal and of the Panel

INDEX NO.:	FST File Number P0169-2001
PLAN:	Imperial Oil Limited Retirement Plan, Registration Number 347054
DATE OF DECISION:	October 21, 2002
PUBLISHED:	Bulletin 12/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services (the "Superintendent") to Make an Order Requiring the Wind Up in Part of the Imperial Oil Limited Retirement Plan, Registration Number 347054 (the "IOL Plan");

AND IN THE MATTER OF a Proposal by the Superintendent to Make an Order with respect to the Calculation of Pension Benefits pursuant to section 87 of the Act, relating to the IOL Plan;

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:

IMPERIAL OIL LIMITED
Applicant
-and-
SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

BEFORE:

Mr. Colin H.H. McNairn
Vice Chair of the Tribunal and Chair of the Panel

Mr. William Forbes
Member of the Tribunal and of the Panel

Ms. Heather Gavin
Member of the Tribunal and of the Panel

APPEARANCES:

For Imperial Oil Limited:
Mr. J. Brett Ledger
Mr. Evan S. Howard

For the Superintendent of Financial Services:
Ms. Deborah McPhail

HEARING DATES:
June 13 and August 1, 2002

REASONS FOR DECISION OF MR. MCNAIRN AND MR. FORBES

Statement of Facts

Imperial Oil Limited ("IOL") sold its "Esso" branded consumer and small commercial credit card receivables to General Electric Capital Canada Inc. ("GE Capital") effective April 28, 1995. The purchase and sale agreement provided that GE Capital would establish a credit card program pursuant to which it would issue credit cards bearing the service mark "Esso". In November of 1995, in connection with the sale, 37 employees of IOL (the "Transferred Employees") became employees of GE Capital. The Transferred Employees were members of the Imperial Oil Limited Retirement Plan.

Registration Number 347054 (the "IOL Plan") and, upon their transfer, became members of a pension plan sponsored by GE Capital (the "GE Capital Plan"). The pension benefits accrued by the Transferred Employees prior to their transfer to GE Capital remained payable from the IOL Plan.

Upon assuming their new employment, the Transferred Employees changed their place of work from IOL's office building at 90 Wynford Drive in Don Mills, Ontario (the "Wynford Facility") to GE Capital's building at 600 Alden Road in Markham, Ontario, known as the "Toronto Business Centre". The Wynford Facility also housed other business operations of IOL and continued to do so following the sale of the credit card business to GE Capital.

Some of the employees of IOL who worked in the credit card business at the Wynford Facility and were members of the IOL Plan did not become Transferred Employees but lost their jobs as a result of the sale of the business. They were given severance packages by IOL, but there was no partial wind up of the IOL Plan in respect of those employees.

Around the end of 1997, the credit card business of GE Capital that was carried on at the Toronto Business Centre was transferred to GE Capital Canada Retailer Financial Services Company, an affiliate of GE Capital, and the employees engaged in the business, including the Transferred Employees who continued in the service of GE Capital, became employees of that affiliate.

The business carried on at the Toronto Business Centre related to both Esso and Petro-Canada credit cards. Commencing about the end of 1998, there was some integration of the business activities relating to the two credit card lines, which involved some of the Transferred Employees doing work in relation to the Petro-Canada card, as well as the Esso card, and some of the other employees doing work in relation to the Esso card, as well as the Petro-Canada card.

At the same time as it operated its Toronto Business Centre, GE Capital maintained a billing and embossing unit for its credit card operations on Alden Road in Markham at a different municipal address from the Toronto Business Centre but in a building that, according to the evidence, "may have been across the parking lot" from that Centre. This facility provided services for the credit card business at the Toronto Business Centre, as well as for other credit card businesses of GE Capital.

Upon the conclusion of its credit card contracts with IOL and Petro-Canada, GE Capital discontinued the credit card business that it carried on at the Toronto Business Centre in July of 2000, resulting in the termination of the employees who worked at that location. The terminated employees included 32 remaining Transferred Employees from IOL. Of these, three employees were re-hired by IOL and their service with GE Capital was recognized for eligibility purposes under the IOL Plan. GE Capital then wound up the GE Capital Plan effective September 7, 2000.

On August 3, 2001, the Superintendent of Financial Services (the "Superintendent") issued a notice of proposal to make an order to wind up the IOL Plan in part — in relation to those members and former members who were employed by GE Capital at the Toronto Business Centre and who ceased employment with GE Capital between March 2000 and July 2000 as a result of the closure of that Centre (the "First Notice of Proposal"). The Superintendent issued a further notice of proposal, on the same date, proposing to make an order that the administrator of the IOL Plan give credit for both age and

years of service, as at the time of the closure of the Toronto Business Centre, to those members and former members of the IOL Plan who ceased employment with GE Capital between March 2000 and July 2000 as a result of the closure of the Toronto Business Centre, when determining entitlement to benefits under the IOL Plan (the "Second Notice of Proposal").

IOL filed Requests for Hearing by the Tribunal in respect of both Notices of Proposal on August 24, 2001. The hearings before the Tribunal relating to the two Notices of Proposal were heard together.

Consideration of the Issues

There are two principal issues that the Tribunal must address in this case, the first relating to the First Notice of Proposal and the second relating to the Second Notice of Proposal.

1. **Whether the Superintendent is entitled in the circumstances of this case to make an order, under clause (e) of subsection 69(1) of the Pension Benefits Act, as amended (the "Act"), requiring the partial wind up of the IOL Plan.**

   Subsection 69(1) of the Act describes the various situations in which the Superintendent may order a wind up, in whole or in part, of a pension plan. They include the following:

   (d) a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;

   (e) all or a significant portion of the business carried on by the employer at a specific location is discontinued;

While the Superintendent relied initially on both of these clauses, as indicated in the First Notice of Proposal, reliance was limited to clause (e) at the hearing before this Tribunal. The Superintendent maintained that in this case the discontinuance of the credit card business at GE Capital's Toronto Business Centre could be attributed to IOL, as well as to GE Capital, with the result that the Superintendent was entitled to order the partial wind up of the IOL Plan in relation to those members who lost their employment due to that discontinuance of business and who were not re-employed by IOL.

The stated basis for the Superintendent's position in this case is the decision of the Pension Commission of Ontario (the "PCO") in *GenCorp Canada Inc. v. Ontario (Superintendent of Pensions)* (1994), PCO Bulletin 5/3 (Fall 1994) (Index No. XDEC-25), a case involving the application of clause (d) of subsection 69(1) of the Act. In *GenCorp*, a company was ordered to wind up its pension plan in part — in relation to those of its former employees whose employment was transferred in connection with the sale of the business in which they were engaged — when the successor company discontinued the business by closing the plant it had acquired on the sale, thus terminating the employment of the transferred employees. In that case, as in the present case, the transferred employees ceased to accrue benefits under the plan in question upon the sale but remained entitled to pension benefits under it that had accrued to the date of sale. The PCO concluded that the company that sold the business was deemed to continue as the employer of the transferred employees after the sale by virtue of what was then section 29 of the Act, a conclusion that was consistent with the broad definition of "employer" in section 1 of the Act. Therefore, the discontinuance of the business by the successor company, on

the closure of the plant, resulted in the termination of their deemed employment with the predecessor company (as well as their actual employment with the successor company), enabling the Superintendent to order the wind up of the predecessor company's pension plan, in relation to the transferred employees, under clause (d) of subsection 69(1) of the Act.

Appeals from the decision of the PCO were dismissed by the Divisional Court and the Court of Appeal, both of which found that the PCO's interpretation of the relevant provisions of the Act was reasonable and, therefore, should not be disturbed on review (see (1995), 26 O.R. (3d) 696 (Div. Ct.), and (1998), 39 O.R. (3d) 38 (C.A.)). The Court of Appeal also concluded that if the standard of review were correctness, rather than reasonableness, the PCO's interpretation was indeed correct.

Section 29 of the Act provided, among other things, that an employee is deemed not to have been terminated by reason of a sale of a business by the employer that is accompanied by a transfer of the employee to the acquiror of the business, who then becomes a successor employer (the "deemed continuation-of-employment provision"). This provision has been carried forward (with some modifications that are not material for present purposes) in section 80 of the Act. The latter section currently provides, in subsection (3), as follows:

> (3) Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this Act, not to be terminated by reason of the transaction.

Subsections (1) and (2) of section 80 are to the following effect:

> (1) Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business, a member of the pension plan who, in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and becomes a member of the pension plan provided by the successor employer,
>
> (a) continues to be entitled to the benefits provided under the employer's pension plan in respect of employment in Ontario or a designated province to the effective date of the sale, assignment or disposition without further accrual;
>
> (b) is entitled to credit in the pension plan of the successor employer for the period of membership in the employer's pension plan, for the purpose of determining eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and
>
> (c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the employer's pension plan.
>
> (2) Clause (1) (a) does not apply if the successor employer assumes responsibility for the accrued pension benefits of the employer's pension plan and the pension plan of the successor employer shall be deemed to be a continuation of the employer's plan with respect to any benefits or assets transferred.

The term "employer", which is used in both clause (d) and (e) of subsection 69(1) of the Act, is defined in section 1 of the Act as follows:

> "employer", in relation to a member or former member of a pension plan, means the person or persons from whom or the organization from which the member or former member receives

or received remuneration to which the pension plan is related, and "employed" and "employment" have a corresponding meaning;

The term is, thus, capable of covering a former employer of an individual as well as the current employer of the individual where that individual was and is a member of a pension plan in connection with his or her employment.

All but one of the arguments on the first issue in the present case related, essentially, to whether *GenCorp* should be taken to govern the outcome of this case or whether there are distinguishing features in this case that justify a different conclusion.

IOL maintained that the *GenCorp* decision should not dictate the result of the present case for a number of reasons, the first being a policy reason. IOL portrayed the policy objective underlying the decision in *GenCorp* — to order a partial wind up — as being the preservation of benefits (such as the "grow in benefits" mandated on a wind up) that the employees at the plant would have received had the plant simply been closed and not been transferred as a going concern along with those employees (indeed, the PCO placed some emphasis on this element of the case, see (1994), PCO Bulletin 5/3 (Fall 1994), at pp. 60 and 62). In that event, the employer could have been ordered to wind up the plan in relation to those employees, pursuant to clause (e) of subsection 69(1) of the Act, since it would have discontinued the business carried on by it at a particular location, namely the plant site. The partial wind up that was in fact ordered in *GenCorp* could, therefore, be said to be a "deferred wind up" that commended itself because it afforded an equitable result for the transferred employees. The same thing could not be said about any partial wind up that might be ordered in the present case since there would have been no basis for a partial wind up had IOL simply discontinued the credit card business carried on at its Wynford Facility. Thus, any partial wind up of the IOL Plan upon GE Capital's discontinuance of the business was not, in any sense, a "deferred wind up" of the IOL Plan that simply preserved the opportunity for the Transferred Employees to participate in the benefits of a partial wind up (such as "grow in benefits") that they would have had if the business had been discontinued by IOL.

IOL also argued that the Superintendent's proposed partial wind up order in the present case was not only unnecessary to achieve an equitable result, but would create an inequity — as between those employees who lost their jobs on the sale of the business and their fellow employees who were transferred with the business. The former were never entitled to participate in a partial wind up of the IOL Plan while the latter would be so entitled under the Superintendent's order. But the same inequity may well have arisen in *GenCorp* for the statement of facts in the PCO decision in that case suggests that, as in this case, something short of all the employees were transferred with the business (see (1994), PCO Bulletin 5/3 (Fall 1994), p. 58), although it does not say whether any non-transferred employees simply lost their jobs or were offered alternative employment at another location.

We do not believe that clause (d) or (e) of subsection 69(1) of the Act, as read with subsection 80(3), can be taken to have the effect of authorizing a wind up of a pension plan that amounts to a "deferred wind up," as in *GenCorp*, but as failing to authorize a wind up that could not be characterized as such, as in the present case. There is nothing in the language of those statutory provisions that suggests such a distinction. The determining circumstances that justify the

wind up of a pension plan in relation to former employees are essentially post-sale-of-business circumstances; they have nothing to do with the hypothetical benefits that a terminated employee might have had in the absence of continuing employment with a successor employer. Moreover, any inequity that might result from a wind up order — as between those employees who were out of work on the sale of a business and those employees who had the opportunity for continuing employment with a successor — does not have any bearing, under the relevant statutory provisions, on the question of whether the Superintendent is authorized to make such an order. Of course, the Superintendent does not have to make a wind up order whenever the circumstances set out in clause (d), (e), or any other clause of subsection 69(1) are present since the authority in that subsection is discretionary. The Superintendent can properly weigh the equities in the balance in the exercise of that discretion.

Second, IOL argued that the present case is distinguishable from *GenCorp* because the entity that was the immediate successor employer, namely GE Capital, did not cause the Transferred Employees to lose their jobs. Rather that was the result of the action of another entity, GE Capital Canada Retailer Financial Services Company ("GE Retailer"), an affiliate of GE Capital that acquired the business carried on by GE Capital at the Toronto Business Centre around the end of 1997 and assumed the position of employer of the Transferred Employees, and of the other employees at the Centre, at that time.

After taking on the Transferred Employees, GE Retailer became their "employer" (along with IOL and GE Capital) in the sense of the Act and, therefore, for the purposes of clause (e) of subsection 69(1). It seems clear to us that the deemed continuation-of-employment provision in subsection 80(3) of the Act is capable of applying more than once to a transferred employee so that his or her employment is continued through sequential sales of the business in which the employee is engaged. In any event, we think that clause (e) of subsection 69(1), as read with subsection 80(3), should be taken to trigger the right of the Superintendent to order the wind up, in whole or in part, of an employer's pension plan when a successor corporate organization or group, to which employees are transferred, terminates those employees by discontinuing the acquired business as it is carried on at a particular location. We do not think that it should make any difference if a corporate reorganization happens to have occurred, before the business is discontinued, with a resulting change in the entity within the organization or group that is the actual employer of the transferred employee. Such an event ought not to affect the potential statutory benefits that the transferred employees might have as a result of their membership in the pension plan of the predecessor employer.

IOL's third argument for distinguishing the present case from *GenCorp* is that the business that was sold in *GenCorp* was carried on at the same location both before and after the sale whereas the location of the business changed with the sale in the present case. However, the location of the business did not assume any particular importance in *GenCorp*. That is not surprising as business location is not a factor in the deemed continuation-of-employment provision of the Act (now in subsection 80(3)) and discontinuance of business at a specific location was not the trigger for the wind up in that case since the PCO ordered it to proceed on the basis of clause (d), rather than clause (e), of subsection 69(1) of the Act. Nonetheless, the approach in *GenCorp*

lends itself to application in the present case. If a successor employer's termination of transferred employees as a result of a discontinuance of an acquired business constitutes deemed termination by the predecessor employer, as in *GenCorp*, so too should a successor employer's discontinuance of an acquired business, as carried at a particular location, constitute a deemed discontinuance by the predecessor employer if it results in loss of employment by the transferred employees, as in the present case (the PCO said as much in obiter comments in *GenCorp*, (1994), PCO Bulletin 5/3 (Fall 1994), at p. 62). It should make no difference that the predecessor employer never carried on business at that location just as it made no difference in *GenCorp* that the predecessor employer had no hand in the discontinuance of business. There is a similar relationship between the action of the successor employer and the predecessor employer in the two situations — that is the employees originally employed by the predecessor employer lost their jobs as a result of the action of the successor employer. While clause (e) of subsection 69(1) of the Act does not refer explicitly to cessation of employment (although clause (d) does), this must be the necessary result of the discontinuance of business at a specific location before the Superintendent can order a wind up under clause (e). If there is a discontinuance of business without any loss of employment, say where all the employees are transferred to a new location, it seems self-evident that the Superintendent would not be authorized to order a wind up of the pension plan in relation to those employees.

The fourth argument that IOL made for distinguishing the present case from *GenCorp* is that the roles of the Transferred Employees changed in the present case upon the sale of the business. In particular, some of them performed functions thereafter in relation to the Petro-Canada, as well as the IOL, credit card program and other employees were integrated into the credit card operations with the Transferred Employees. But we do not know whether there were comparable changes in the roles of the transferred employees in *GenCorp* following the sale of the business as the reasons for decision, at the various levels in that case, are silent on this point. In fact, the only important business-related consideration under clause (d) or (e) of subsection 69(1) of the Act, as read with subsection 80(3), would seem to be whether the business that was discontinued, or closed at a specific location, by a successor employer was a business in which the transferred employees were working.

Finally, IOL submitted that all or a significant portion of the business carried on by GE Capital (or GE Retailer) at a specific location was not discontinued with the closure of the Toronto Business Centre because GE Capital had another Alden Road facility across the parking lot that provided card embossing and billing services for the credit card business carried on at the Toronto Business Centre as well as for other credit card businesses of GE Capital. We are not persuaded, on the basis of the evidence we have heard, that there was sufficient physical and operational integration of the two Alden Road facilities that they should be treated as part of a single specific business location for the purposes of clause (e) of subsection 69(1) of the Act nor was there any clear evidence that the credit card embossing facility continued in operation after the closure of the Toronto Business Centre. Therefore, we are not persuaded that the closure of that Centre involved something short of the discontinuance of business at a specific location.

Conclusion

We conclude, therefore, that the Superintendent is authorized to order the partial wind up of the IOL Plan as proposed in the First Notice of Proposal. The Superintendent's exercise, in the circumstances of the present case, of the discretion involved in carrying out that authority was not challenged before us. IOL simply took the position that the Superintendent did not have the authority to make the proposed order, a position that we have rejected for the reasons set out above. Therefore, we order the Superintendent to carry out the proposal contained in the First Notice of Proposal, subject to the qualification that the order of the Superintendent requiring the partial wind up of the IOL Plan should exclude from the partial wind up group the three Transferred Employees who were re-employed by IOL upon the cessation of their employment with GE Capital (or GE Retailer).

2. **Are the former members of the IOL Plan who ceased employment with GE Capital between March, 2000 and July, 2000 entitled to credit in that Plan for any increase in age during their period of employment with GE Capital for the purpose of determining entitlement to benefits under the IOL Plan pursuant to clause (c) of subsection 80(1) of the Act?**

In the Second Notice of Proposal, the Superintendent proposes to make an order that the administrator of the IOL Plan give credit for both age and years of service, as at the closure of GE Capital's Toronto Business Centre, to those members who ceased employment with GE Capital between March, 2000 and July, 2000, as a result of that closure, when determining entitlement to benefits under the IOL Plan. IOL concedes that where clause (c) of subsection 80(1) of the Act applies, it generally requires a pension plan to take account of a member's service with a successor employer and, consequently, any increase in age during that service. However, IOL disputes that this or any other provision of the Act would enable a member of the IOL Plan to "grow into" the particular age requirements under section 4.3 of that Plan or otherwise satisfy the conditions for the operation of that section.

Section 4.3 of the IOL Plan provides for an enhanced early retirement pension in the circumstances that it prescribes, as follows:

> 4.3 Pension in Lieu of Termination Annuity
>
> A Member with 10 years or more of Service whose employment is terminated by the Company and who is eligible for a termination annuity ... and who will be eligible to retire ... within five years of terminating employment [i.e. who is terminated when between the ages of 50 and 55] may retire ... and receive a pension ... in lieu of a termination annuity ... if the Member's employment is terminated for reasons deemed by the Company to be for maintaining or improving the efficiency of its operations; provided, however, that the date of retirement for the purpose of receiving payment of such pension shall not be effective until the last day of the month in which the Member attains age 55 ...

For ease of reference, we set out, once again, some of the provisions of section 80 of the Act, a section which also figured into the determination of the first issue in this case:

> 80. (1) Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the employer's busi-

> ness or all or part of the assets of the employer's business, a member of the pension plan who, in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and becomes a member of the pension plan of the successor employer,
>
> ...
>
> (c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the employer's pension plan.
>
> ...
>
> (3) Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this Act, not to be terminated by reason of the transaction.

The Superintendent relied on clause (c) of subsection 80(1) as requiring, for the purposes of section 4.3 of the IOL Plan, that IOL give credit for any age progression of the Transferred Employees while they were employed by GE Capital (or GE Retailer), and subsection 80(3) as deeming the circumstances of the termination of those Employees to be circumstances of their termination, at the same time, by IOL, their original employer.

However, the deemed continuation-of-employment provision of subsection 80(3) operates "for the purposes of [the] Act" and not for the purposes of a pension plan subject to the Act. By contrast, the predecessor provision, in what was then subsection 29(2) of the Act, deemed employment to continue "for the purposes of the employer's plan". The change in wording should be taken to be purposeful and to have some practical effect. The Superintendent argued that the change in wording can be explained by the fact that it coincided with the introduction into the Act of a requirement that the administrator of a pension plan must ensure, under subsection 19(1), that a pension plan is administered in accordance with the Act and of authority on the part of the Superintendent, under subsection 87(2), to make an order against the administrator requiring it to take action or refrain from taking action in respect of a pension plan if of the opinion that the plan is not being administered "in accordance with [the] Act, the regulations or the plan" (emphasis added). The Superintendent suggested that "for the purposes of the Act", therefore, now embraces "for the purposes of the pension plan" since the Act requires, in effect, that every plan be administered in accordance with the plan. Consequently, it was possible, in the Superintendent's view, to move to the new statement of purposes in subsection 80(3) without losing the effect of the original statement of purposes in the predecessor subsection 29(2).

We do not think that the use of a particular principle set out in the Act (as in subsection 80(3)), in order to interpret a provision of a pension plan (such as section 4.3 of the IOL Plan), can be said to be "for the purposes of the Act". It might be so if the Act stated expressly that the principle applied for the purposes of any pension plan, so that use of the principle to interpret the plan was, arguably, a purpose of the Act. But that is not the situation in the present case. We do not think that subsection 87(2) of the Act provides such an express statement for all it says is that the Superintendent has the authority to take enforcement action if there is a breach by the plan administrator of a provision of a pension plan. That does not make the interpretation of any such provision a purpose of the Act. What the Superintendent can

enforce is the plan, properly interpreted. Subsection 87(2) does not purport to dictate how the plan should be interpreted by superimposing principles of the Act that do not apply, of their own force, to the plan.

The interpretation of section 4.3 of the IOL Plan, as it applies in the circumstances of this case, is not governed by the *GenCorp* decision nor by the same principles that led us to apply *GenCorp* in resolving the first issue in the present case. *GenCorp* and its application in this case concern the effect of subsection 80(3) of the Act upon the operation of subsection 69(1) of the Act. The latter subsection refers, in clauses (d) and (e), to the action of an "employer", in the form of a business discontinuance or reorganization, as triggering the right of the Superintendent to order the wind up of a pension plan. The term "employer" is defined in the Act, as noted in *GenCorp*, to include both the original employer and a successor employer, so that it would cover IOL and GE Capital (or GE Retailer) in the present case. By comparison, section 4.3 of the IOL Plan refers to the action of the "Company" and the rationale of the "Company" for that action. In particular, the section takes effect where there is a termination of employment by the Company and such termination is for reasons deemed by the Company to be for maintaining or improving the efficiency of its operations. The term "Company" is defined, for the purposes of the IOL Plan, as meaning IOL and any affiliate designated by IOL for participation in the IOL Plan; the definition does not include a successor employer. Therefore, the termination of employment that is addressed by section 4.3 of the IOL Plan must mean, in the case of the Transferred Employees, their termination by IOL upon the sale of IOL's credit card business to GE Capital, not their subsequent termination by GE Capital (or GE Retailer). Consequently, their entitlement to receive the benefit provided by section 4.3 must depend on their age at the time of that termination, assuming it to have been "for efficiency reasons". If they were age 50 to 55 at that time, they would qualify for the benefit.

We are then left with the question of whether the latter conclusion is altered by clause (c) of subsection 80(1) of the Act, which says that employees in the position of the Transferred Employees are entitled to credit in their employer's pension plan for the period of their employment with the successor employer for the purpose of determining entitlement to benefits under the employer's plan. Clearly, this provision does not attribute the actions of a successor employer, in relation to any transferred employees, to the original employer. It cannot, therefore, overcome the requirement of section 4.3 of the IOL Plan that there must have been a termination "by the Company" [i.e. IOL] for efficiency purposes before one gets to the question of whether an employee falls within the qualifying age range for a section 4.3 benefit. The only such termination that may have occurred, on the facts we have before us, was in 1995 when the Transferred Employees moved to GE Capital.

Conclusion

We conclude, therefore, that none of the Transferred Employees could become entitled to the benefit under section 4.3 of the IOL Plan by virtue of the achievement of the age qualification for that benefit while in the employment of GE Capital (or GE Retailer). Accordingly, we order the Superintendent to refrain from carrying out the proposal contained in the Second Notice of Proposal as it relates to determining entitlement to the benefit under section 4.3 of the IOL Plan.

DATED at Toronto, Ontario, this 21st day of October, 2002.

Colin H.H. McNairn,
Vice Chair of the Tribunal and Chair of the Panel

William Forbes,
Member of the Tribunal and of the Panel

REASONS FOR DECISION OF MS. GAVIN

For the purposes of these Reasons, I adopt the Statement of Facts set out in the separate Reasons for Decision of the other members of the panel that heard this case. The defined terms in those Reasons for Decision are used in the same sense in these Reasons.

The panel was asked to consider two principal issues. The first issue is whether the Superintendent was entitled in the circumstances of this case to make an order, under clause (e) of subsection 69(1) of the Act, requiring a partial wind up of the IOL Plan. On this issue, I agree with my colleagues that a partial plan wind up was appropriate in the circumstances and I concur in the order that they make as a result of their conclusion on this issue.

The second issue is whether the former members of the IOL Plan who ceased employment with GE Capital between March 2, 2000 and July, 2000 are entitled to credit in that Plan for any increase in age during their period of employment with GE Capital for the purpose of determining entitlement to benefits under the IOL Plan pursuant to clause (c) of subsection 80(1) of the Act. On this issue, I disagree with the reasoning of my colleagues.

IOL and the Superintendent agree that in November of 1995, as a result of IOL selling its "Esso" branded consumer and small commercial credit card receivables to GE Capital, the Transferred Employees became entitled to the benefit of section 80 of the Act. They became, in effect, a distinct group within the IOL Plan. They continued their membership in that Plan and their subsequent service with GE Capital (and GE Rétailer) would be used to determine entitlement to benefits under the Plan, in accordance with subsection 80(1) of the Act, and their subsequent termination by GE Retailer would be deemed to be termination by IOL, principally as a result of the operation of subsection 80(3) of the Act.

My colleagues conclude that subsection 80(3) cannot influence the resolution of the second issue because it operates "for the purposes of [the] Act" and not for the purposes of a pension plan subject to the Act. They rely on the fact that the Act was amended to substitute the former phrase for the phrase "for the purposes of the employer's plan", which appeared in a predecessor provision to subsection 80(3) of the Act. As a result, they believe that the Transferred Employees have not had their employment continued for the purposes of determining entitlement to the benefit of any of the provisions of the IOL Plan. I disagree.

The Superintendent's position is that the Act must be read in its entirety, in which case this amendment does not represent a significant change since it was accompanied by further amendments requiring, in subsection 19(1), that a pension plan be administered in accordance with the Act and conferring authority on the Superintendent, under subsection 87(2), to order the administrator of a plan to take or refrain from taking any action when he or she believes that the plan is not being administered in accordance with the Act, the regulations or *the pension plan*. I believe this to be the correct approach.

However, in order to determine if an employee or former employee is entitled to the benefit of

a particular section of a pension plan, one must look at the plan for the determination of eligibility. Under section 4.3 of the IOL Plan, a member must have 10 or more years of service, have their employment terminated by the Company for reasons deemed by the Company to be for maintaining or improving the efficiency of its operations, be eligible for a termination annuity, and be eligible to retire within five years of terminating employment.

For the purposes of the IOL Plan, the term "Company" is defined as being IOL. Therefore, a member of the Plan must have their employment terminated by IOL to be eligible for a benefit under section 4.3 of the Plan since that provision relates to situations where there is a termination by the "Company". Therefore, I agree with my colleagues that section 4.3 of the IOL Plan does not entitle the Transferred Employees to its benefit upon their termination by GE Retailer.

Since the order that my colleagues make in respect of the second issue is limited to entitlement to the benefit under section 4.3 of the IOL Plan, I agree with that order even though I do not agree with all of the reasoning that led to it.

DATED at Toronto, Ontario, this 21st day of October, 2002.

Heather Gavin,
Member of the Tribunal and of the Panel

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